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AN ACT

relating to adoption of the Business Organizations Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ADOPTION OF CODE. The Business Organizations Code is adopted to read as follows:

BUSINESS ORGANIZATIONS CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS AND PURPOSE

Sec. 1.001. PURPOSE

Sec. 1.002. DEFINITIONS

Sec. 1.003. DISINTERESTED PERSON

Sec. 1.004. INDEPENDENT PERSON

Sec. 1.005. CONSPICUOUS INFORMATION

Sec. 1.006. SYNONYMOUS TERMS

Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING

Sec. 1.008. SHORT TITLES

Sec. 1.009. DOLLARS AS MONETARY UNITS

[Sections 1.010-1.050 reserved for expansion]

SUBCHAPTER B. CODE CONSTRUCTION

Sec. 1.051. CONSTRUCTION OF CODE

Sec. 1.052. REFERENCE IN LAW TO STATUTE REVISED BY

CODE

Sec. 1.053. APPLICABILITY TO FOREIGN AND INTERSTATE

1                   AFFAIRS

2   Sec. 1.054.   RESERVATION OF POWER

3                   [Sections 1.055-1.100 reserved for expansion]

4                   SUBCHAPTER C. DETERMINATION OF APPLICABLE LAW

5   Sec. 1.101.   DOMESTIC FILING ENTITIES

6   Sec. 1.102.   FOREIGN FILING ENTITIES

7   Sec. 1.103.   ENTITIES NOT FORMED BY FILING INSTRUMENT

8   Sec. 1.104.   LAW APPLICABLE TO LIABILITY

9   Sec. 1.105.   INTERNAL AFFAIRS

10   Sec. 1.106.   ORDER OF PRECEDENCE

11                  CHAPTER 2. PURPOSES AND POWERS OF DOMESTIC ENTITY

12                  SUBCHAPTER A. PURPOSES OF DOMESTIC ENTITY

13   Sec. 2.001.   GENERAL SCOPE OF PERMISSIBLE PURPOSES

14   Sec. 2.002.   PURPOSES OF NONPROFIT ENTITY

15   Sec. 2.003.   GENERAL PROHIBITED PURPOSES

16   Sec. 2.004.   LIMITATION ON PURPOSES OF PROFESSIONAL

17                   ENTITY

18   Sec. 2.005.   LIMITATION IN GOVERNING DOCUMENTS

19   Sec. 2.006.   PERMISSIBLE PURPOSE OF FOR-PROFIT CORPORATION

20                   RELATED TO RAILROADS

21   Sec. 2.007.   ADDITIONAL PROHIBITED ACTIVITIES OF FOR-PROFIT

22                   CORPORATION

23   Sec. 2.008.   NONPROFIT CORPORATIONS

24   Sec. 2.009.   PERMISSIBLE PURPOSE OF NONPROFIT

25                   CORPORATION RELATED TO ORGANIZED

26                   LABOR

27   Sec. 2.010.   PROHIBITED ACTIVITIES OF NONPROFIT

- 1 CORPORATION
- 2 Sec. 2.011. PURPOSES OF COOPERATIVE ASSOCIATION
- 3 Sec. 2.012. LIMITATION ON PURPOSES OF REAL ESTATE
- 4 INVESTMENT TRUST
- 5 [Sections 2.013-2.100 reserved for expansion]
- 6 SUBCHAPTER B. POWERS OF DOMESTIC ENTITY
- 7 Sec. 2.101. GENERAL POWERS
- 8 Sec. 2.102. ADDITIONAL POWERS OF NONPROFIT ENTITY OR
- 9 INSTITUTION
- 10 Sec. 2.103. POWER TO INCUR INDEBTEDNESS
- 11 Sec. 2.104. POWER TO MAKE GUARANTIES
- 12 Sec. 2.105. ADDITIONAL POWERS OF CERTAIN PIPELINE
- 13 BUSINESSES
- 14 Sec. 2.106. POWER OF NONPROFIT CORPORATION TO SERVE AS
- 15 TRUSTEE
- 16 Sec. 2.107. STANDARD TAX PROVISIONS FOR CERTAIN
- 17 CHARITABLE NONPROFIT CORPORATIONS;
- 18 POWER TO EXCLUDE
- 19 Sec. 2.108. POWERS OF PROFESSIONAL ASSOCIATION
- 20 Sec. 2.109. POWERS OF PROFESSIONAL CORPORATION
- 21 Sec. 2.110. POWERS OF COOPERATIVE ASSOCIATION
- 22 Sec. 2.111. LIMITATION ON POWERS OF COOPERATIVE
- 23 ASSOCIATION
- 24 Sec. 2.112. STATED POWERS IN SUBCHAPTER SUFFICIENT
- 25 Sec. 2.113. LIMITATION ON POWERS
- 26 Sec. 2.114. CERTIFICATED INDEBTEDNESS; MANNER OF
- 27 ISSUANCE; SIGNATURE AND SEAL

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2                   SUBCHAPTER A. FORMATION, EXISTENCE, AND

3                                   CERTIFICATE OF FORMATION

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5                                   ENTITIES

6   Sec. 3.002.   FORMATION AND EXISTENCE OF NONFILING

7                                   ENTITIES

8   Sec. 3.003.   DURATION

9   Sec. 3.004.   ORGANIZERS

10   Sec. 3.005.   CERTIFICATE OF FORMATION

11   Sec. 3.006.   FILINGS IN CASE OF MERGER OR CONVERSION

12   Sec. 3.007.   SUPPLEMENTAL PROVISIONS REQUIRED IN

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17                                   CORPORATION

18   Sec. 3.009.   SUPPLEMENTAL PROVISIONS REQUIRED IN

19                                   CERTIFICATE OF FORMATION OF NONPROFIT

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23                                   LIABILITY COMPANY

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26                                   PARTNERSHIP

27   Sec. 3.012.   SUPPLEMENTAL PROVISIONS REQUIRED IN



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3 Sec. 3.013. SUPPLEMENTAL PROVISIONS REQUIRED IN  
4 CERTIFICATE OF FORMATION OF COOPERATIVE  
5 ASSOCIATION

6 Sec. 3.014. SUPPLEMENTAL PROVISIONS REQUIRED IN  
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9 Sec. 3.015. SUPPLEMENTAL PROVISIONS REQUIRED IN  
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12 [Sections 3.016-3.050 reserved for expansion]

13 SUBCHAPTER B. AMENDMENTS AND RESTATEMENTS OF  
14 CERTIFICATE OF FORMATION

15 Sec. 3.051. RIGHT TO AMEND CERTIFICATE OF FORMATION

16 Sec. 3.052. PROCEDURES TO AMEND CERTIFICATE OF  
17 FORMATION

18 Sec. 3.053. CERTIFICATE OF AMENDMENT

19 Sec. 3.054. SUPPLEMENTAL PROVISIONS FOR CERTIFICATE  
20 OF AMENDMENT OF FOR-PROFIT CORPORATION

21 Sec. 3.055. SUPPLEMENTAL PROVISIONS FOR CERTIFICATE  
22 OF AMENDMENT OF REAL ESTATE INVESTMENT  
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26 Sec. 3.057. RIGHT TO RESTATE CERTIFICATE OF FORMATION

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- 2   Sec. 3.059.   RESTATED CERTIFICATE OF FORMATION
- 3   Sec. 3.060.   SUPPLEMENTAL PROVISIONS FOR RESTATED
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- 9   Sec. 3.062.   SUPPLEMENTAL PROVISIONS FOR RESTATED
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- 14                  [Sections 3.064-3.100 reserved for expansion]
- 15                  SUBCHAPTER C. GOVERNING PERSONS AND OFFICERS
- 16   Sec. 3.101.   GOVERNING AUTHORITY
- 17   Sec. 3.102.   RIGHTS OF GOVERNING PERSONS IN CERTAIN
- 18                  CASES
- 19   Sec. 3.103.   OFFICERS
- 20   Sec. 3.104.   REMOVAL OF OFFICERS
- 21   Sec. 3.105.   RIGHTS OF OFFICERS IN CERTAIN CASES
- 22                  [Sections 3.106-3.150 reserved for expansion]
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- 25                  ENTITIES
- 26   Sec. 3.152.   GOVERNING PERSON'S RIGHT OF INSPECTION
- 27   Sec. 3.153.   RIGHT OF EXAMINATION BY OWNER OR MEMBER

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2 SUBCHAPTER E. CERTIFICATES REPRESENTING OWNERSHIP INTEREST

3 Sec. 3.201. CERTIFICATED OR UNCERTIFICATED OWNERSHIP  
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5 Sec. 3.202. FORM AND VALIDITY OF CERTIFICATES;  
6 ENFORCEMENT OF ENTITY'S RIGHTS

7 Sec. 3.203. SIGNATURE REQUIREMENT

8 Sec. 3.204. DELIVERY REQUIREMENT

9 Sec. 3.205. NOTICE FOR UNCERTIFICATED OWNERSHIP  
10 INTEREST

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14 Sec. 4.002. ACTION BY SECRETARY OF STATE

15 Sec. 4.003. FILING OR ISSUANCE OF REPRODUCTION  
16 OR FACSIMILE

17 Sec. 4.004. TIME FOR FILING

18 Sec. 4.005. CERTIFICATES AND CERTIFIED COPIES

19 Sec. 4.006. FORMS ADOPTED BY SECRETARY OF STATE

20 Sec. 4.007. LIABILITY FOR FALSE FILING

21 INSTRUMENTS

22 Sec. 4.008. OFFENSE; PENALTY

23 Sec. 4.009. FILINGS BY REAL ESTATE INVESTMENT TRUST

24 [Sections 4.010-4.050 reserved for expansion]

25 SUBCHAPTER B. WHEN FILINGS TAKE EFFECT

26 Sec. 4.051. GENERAL RULE

27 Sec. 4.052. DELAYED EFFECTIVENESS OF CERTAIN

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3    Sec. 4.054.    DELAYED EFFECTIVENESS ON FUTURE

## 4                    EVENT OR FACT

5    Sec. 4.055.    STATEMENT OF EVENT OR FACT

6    Sec. 4.056.    FAILURE TO FILE STATEMENT

7    Sec. 4.057.    ABANDONMENT BEFORE EFFECTIVENESS

8    Sec. 4.058.    DELAYED EFFECTIVENESS NOT PERMITTED

9    Sec. 4.059.    ACKNOWLEDGMENT OF FILING WITH

## 10                   DELAYED EFFECTIVENESS

11                   [Sections 4.060-4.100 reserved for expansion]

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14   Sec. 4.102.    LIMITATION ON CORRECTION OF FILINGS

15   Sec. 4.103.    CERTIFICATE OF CORRECTION

16   Sec. 4.104.    FILING CERTIFICATE OF CORRECTION

17   Sec. 4.105.    EFFECT OF CERTIFICATE OF CORRECTION

18   Sec. 4.106.    AMENDMENT OF FILINGS

19                   [Sections 4.107-4.150 reserved for expansion]

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22   Sec. 4.152.    FILING FEES:   FOR-PROFIT CORPORATIONS

23   Sec. 4.153.    FILING FEES:   NONPROFIT CORPORATIONS

24   Sec. 4.154.    FILING FEES:   LIMITED LIABILITY COMPANIES

25   Sec. 4.155.    FILING FEES:   LIMITED PARTNERSHIPS

26   Sec. 4.156.    FILING FEES:   PROFESSIONAL ASSOCIATIONS

27   Sec. 4.157.    FILING FEES:   PROFESSIONAL CORPORATIONS

1 Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS

2 Sec. 4.159. FILING FEES: NONPROFIT ASSOCIATIONS

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9 SUBCHAPTER B. GENERAL PROVISIONS RELATING TO NAMES  
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12 Sec. 5.052. UNAUTHORIZED PURPOSE IN NAME PROHIBITED

13 Sec. 5.053. IDENTICAL AND DECEPTIVELY SIMILAR NAMES  
14 PROHIBITED

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16 OR PROFESSIONAL CORPORATION

17 Sec. 5.055. NAME OF LIMITED PARTNERSHIP OR FOREIGN  
18 LIMITED PARTNERSHIP

19 Sec. 5.056. NAME OF LIMITED LIABILITY COMPANY OR  
20 FOREIGN LIMITED LIABILITY COMPANY

21 Sec. 5.057. NAME OF COOPERATIVE ASSOCIATION

22 Sec. 5.058. NAME OF PROFESSIONAL ASSOCIATION

23 Sec. 5.059. NAME OF PROFESSIONAL LIMITED LIABILITY  
24 COMPANY

25 Sec. 5.060. NAME OF PROFESSIONAL ENTITY; CONFLICTS WITH  
26 OTHER LAW OR ETHICAL RULE

27 Sec. 5.061. NAME CONTAINING "LOTTO" OR "LOTTERY"

1 PROHIBITED

2 Sec. 5.062. VETERANS ORGANIZATIONS; UNAUTHORIZED USE  
3 OF NAME

4 Sec. 5.063. NAME OF LIMITED LIABILITY PARTNERSHIP

5 [Sections 5.064-5.100 reserved for expansion]

6 SUBCHAPTER C. RESERVATION OF NAMES

7 Sec. 5.101. APPLICATION FOR RESERVATION OF NAME

8 Sec. 5.102. RESERVATION OF CERTAIN NAMES PROHIBITED;  
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10 Sec. 5.103. ACTION ON APPLICATION

11 Sec. 5.104. DURATION OF RESERVATION OF NAME

12 Sec. 5.105. RENEWAL OF RESERVATION

13 Sec. 5.106. TRANSFER OF RESERVATION OF NAME

14 [Sections 5.107-5.150 reserved for expansion]

15 SUBCHAPTER D. REGISTRATION OF NAMES

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18 Sec. 5.152. APPLICATION FOR REGISTRATION OF NAME

19 Sec. 5.153. CERTAIN REGISTRATIONS PROHIBITED;  
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21 Sec. 5.154. DURATION OF REGISTRATION OF NAME

22 Sec. 5.155. RENEWAL OF REGISTRATION

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24 SUBCHAPTER E. REGISTERED AGENTS AND REGISTERED OFFICES

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27 Sec. 5.202. CHANGE BY ENTITY TO REGISTERED OFFICE

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- 2 Sec. 5.203. CHANGE BY REGISTERED AGENT TO NAME OR
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- 4 Sec. 5.204. RESIGNATION OF REGISTERED AGENT
- 5 [Sections 5.205-5.250 reserved for expansion]
- 6 SUBCHAPTER F. SERVICE OF PROCESS
- 7 Sec. 5.251. FAILURE TO DESIGNATE REGISTERED AGENT
- 8 Sec. 5.252. SERVICE ON SECRETARY OF STATE
- 9 Sec. 5.253. ACTION BY SECRETARY OF STATE
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- 13 Sec. 5.256. OTHER MEANS OF SERVICE NOT PRECLUDED
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- 15 SUBDIVISION
- 16 CHAPTER 6. MEETINGS AND VOTING
- 17 SUBCHAPTER A. MEETINGS
- 18 Sec. 6.001. LOCATION OF MEETINGS
- 19 Sec. 6.002. ALTERNATIVE FORMS OF MEETINGS
- 20 Sec. 6.003. PARTICIPATION CONSTITUTES PRESENCE
- 21 [Sections 6.004-6.050 reserved for expansion]
- 22 SUBCHAPTER B. NOTICE OF MEETINGS
- 23 Sec. 6.051. GENERAL NOTICE REQUIREMENTS
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- 27 SUBCHAPTER C. RECORD DATES

- 1 Sec. 6.101. RECORD DATE FOR PURPOSE OTHER THAN  
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- 6 SUBCHAPTER D. VOTING OF OWNERSHIP INTERESTS
- 7 Sec. 6.151. MANNER OF VOTING OF INTERESTS
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- 11 Sec. 6.154. VOTING OF INTERESTS IN AN ESTATE OR TRUST
- 12 Sec. 6.155. VOTING OF INTERESTS BY RECEIVER
- 13 Sec. 6.156. VOTING OF PLEDGED INTERESTS  
14 [Sections 6.157-6.200 reserved for expansion]
- 15 SUBCHAPTER E. ACTION BY WRITTEN CONSENT
- 16 Sec. 6.201. UNANIMOUS WRITTEN CONSENT TO ACTION
- 17 Sec. 6.202. ACTION BY LESS THAN UNANIMOUS WRITTEN  
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- 19 Sec. 6.203. DELIVERY OF LESS THAN UNANIMOUS  
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- 21 Sec. 6.204. ADVANCE NOTICE NOT REQUIRED  
22 [Sections 6.205-6.250 reserved for expansion]
- 23 SUBCHAPTER F. VOTING TRUSTS AND VOTING AGREEMENTS
- 24 Sec. 6.251. VOTING TRUSTS
- 25 Sec. 6.252. VOTING AGREEMENTS  
26 [Sections 6.253-6.300 reserved for expansion]
- 27 SUBCHAPTER G. APPLICABILITY OF CHAPTER TO PARTNERSHIPS



- 1    Sec. 6.301.    APPLICABILITY OF CHAPTER TO PARTNERSHIPS
- 2    Sec. 6.302.    APPLICABILITY OF SUBCHAPTERS C AND D TO
- 3                    LIMITED LIABILITY COMPANIES
- 4                                CHAPTER 7.  LIABILITY
- 5    Sec. 7.001.    LIMITATION OF LIABILITY OF GOVERNING
- 6                    PERSON
- 7                                CHAPTER 8.  INDEMNIFICATION AND INSURANCE
- 8                                SUBCHAPTER A.  GENERAL PROVISIONS
- 9    Sec. 8.001.    DEFINITIONS
- 10   Sec. 8.002.    APPLICATION OF CHAPTER
- 11   Sec. 8.003.    LIMITATIONS IN GOVERNING DOCUMENTS
- 12   Sec. 8.004.    LIMITATIONS IN CHAPTER
- 13                    [Sections 8.005-8.050 reserved for expansion]
- 14                    SUBCHAPTER B.  MANDATORY AND COURT-ORDERED INDEMNIFICATION
- 15   Sec. 8.051.    MANDATORY INDEMNIFICATION
- 16   Sec. 8.052.    COURT-ORDERED INDEMNIFICATION
- 17                    [Sections 8.053-8.100 reserved for expansion]
- 18                    SUBCHAPTER C.  PERMISSIVE INDEMNIFICATION AND ADVANCEMENT
- 19                                OF EXPENSES
- 20   Sec. 8.101.    PERMISSIVE INDEMNIFICATION
- 21   Sec. 8.102.    GENERAL SCOPE OF PERMISSIVE INDEMNIFICATION
- 22   Sec. 8.103.    MANNER FOR DETERMINING PERMISSIVE
- 23                    INDEMNIFICATION
- 24   Sec. 8.104.    ADVANCEMENT OF EXPENSES
- 25   Sec. 8.105.    INDEMNIFICATION OF AND ADVANCEMENT OF
- 26                    EXPENSES TO PERSONS OTHER THAN GOVERNING
- 27                    PERSONS

1 Sec. 8.106. PERMISSIVE INDEMNIFICATION OF AND REIMBURSEMENT  
2 OF EXPENSES TO WITNESSES

3 [Sections 8.107-8.150 reserved for expansion]

4 SUBCHAPTER D. LIABILITY INSURANCE; REPORTING REQUIREMENTS

5 Sec. 8.151. INSURANCE AND OTHER ARRANGEMENTS

6 Sec. 8.152. REPORTS OF INDEMNIFICATION AND ADVANCES

7 CHAPTER 9. FOREIGN ENTITIES

8 SUBCHAPTER A. REGISTRATION

9 Sec. 9.001. FOREIGN ENTITIES REQUIRED TO REGISTER

10 Sec. 9.002. FOREIGN ENTITIES NOT REQUIRED TO REGISTER

11 Sec. 9.003. PERMISSIVE REGISTRATION

12 Sec. 9.004. REGISTRATION PROCEDURE

13 Sec. 9.005. SUPPLEMENTAL INFORMATION REQUIRED IN

14 APPLICATION FOR REGISTRATION OF FOREIGN

15 FOR-PROFIT CORPORATION

16 Sec. 9.006. SUPPLEMENTAL INFORMATION REQUIRED IN

17 APPLICATION FOR REGISTRATION OF FOREIGN

18 NONPROFIT CORPORATION

19 Sec. 9.007. SUPPLEMENTAL INFORMATION REQUIRED IN

20 APPLICATION FOR REGISTRATION OF FOREIGN

21 LIMITED LIABILITY PARTNERSHIP

22 Sec. 9.008. EFFECT OF REGISTRATION

23 Sec. 9.009. AMENDMENTS TO REGISTRATION

24 Sec. 9.010. NAME CHANGE OF FOREIGN ENTITY

25 Sec. 9.011. VOLUNTARY WITHDRAWAL OF REGISTRATION

26 [Sections 9.012-9.050 reserved for expansion]

27 SUBCHAPTER B. FAILURE TO REGISTER

- 1 Sec. 9.051. TRANACTING BUSINESS OR MAINTAINING COURT  
2 PROCEEDING WITHOUT REGISTRATION
- 3 Sec. 9.052. CIVIL PENALTY
- 4 Sec. 9.053. VENUE
- 5 Sec. 9.054. LATE FILING FEE
- 6 Sec. 9.055. REQUIREMENTS OF OTHER LAW
- 7 [Sections 9.056-9.100 reserved for expansion]
- 8 SUBCHAPTER C. REVOCATION OF REGISTRATION BY  
9 SECRETARY OF STATE
- 10 Sec. 9.101. REVOCATION OF REGISTRATION BY SECRETARY OF  
11 STATE
- 12 Sec. 9.102. CERTIFICATE OF REVOCATION
- 13 Sec. 9.103. REINSTATEMENT BY SECRETARY OF STATE  
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- 15 Sec. 9.104. PROCEDURES FOR REINSTATEMENT
- 16 Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED  
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- 18 Sec. 9.106. REINSTATEMENT OF REGISTRATION FOLLOWING TAX  
19 FORFEITURE
- 20 [Sections 9.107-9.150 reserved for expansion]
- 21 SUBCHAPTER D. JUDICIAL REVOCATION OF REGISTRATION
- 22 Sec. 9.151. REVOCATION OF REGISTRATION BY COURT ACTION
- 23 Sec. 9.152. NOTIFICATION OF CAUSE BY SECRETARY OF STATE
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- 25 Sec. 9.154. CURE BEFORE FINAL JUDGMENT
- 26 Sec. 9.155. JUDGMENT REQUIRING REVOCATION
- 27 Sec. 9.156. STAY OF JUDGMENT

1 Sec. 9.157. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF  
2 FINDINGS BY APPEALS COURT

3 Sec. 9.158. JURISDICTION AND VENUE

4 Sec. 9.159. PROCESS IN STATE ACTION

5 Sec. 9.160. PUBLICATION OF NOTICE

6 Sec. 9.161. FILING OF DECREE OF REVOCATION AGAINST  
7 FOREIGN FILING ENTITY

8 [Sections 9.162-9.200 reserved for expansion]

9 SUBCHAPTER E. BUSINESS, RIGHTS, AND OBLIGATIONS

10 Sec. 9.201. BUSINESS OF FOREIGN ENTITY

11 Sec. 9.202. RIGHTS AND PRIVILEGES

12 Sec. 9.203. OBLIGATIONS AND LIABILITIES

13 Sec. 9.204. RIGHT OF FOREIGN FILING ENTITY TO PARTICIPATE  
14 IN BUSINESS OF CERTAIN DOMESTIC ENTITIES

15 [Sections 9.205-9.250 reserved for expansion]

16 SUBCHAPTER F. DETERMINATION OF TRANSACTING BUSINESS IN  
17 THIS STATE

18 Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS  
19 IN THIS STATE

20 Sec. 9.252. OTHER ACTIVITIES

21 [Sections 9.253-9.300 reserved for expansion]

22 SUBCHAPTER G. MISCELLANEOUS PROVISIONS

23 Sec. 9.301. APPLICABILITY OF CODE TO CERTAIN FOREIGN  
24 ENTITIES

25 CHAPTER 10. MERGERS, INTEREST EXCHANGES, CONVERSIONS,  
26 AND SALES OF ASSETS

27 SUBCHAPTER A. MERGERS

- 1    Sec. 10.001.   ADOPTION OF PLAN OF MERGER
- 2    Sec. 10.002.   PLAN OF MERGER:  REQUIRED PROVISIONS
- 3    Sec. 10.003.   CONTENTS OF PLAN OF MERGER:  MORE THAN ONE
- 4                    SUCCESSOR
- 5    Sec. 10.004.   PLAN OF MERGER:  PERMISSIVE PROVISIONS
- 6    Sec. 10.005.   CREATION OF HOLDING COMPANY BY MERGER
- 7    Sec. 10.006.   SHORT FORM MERGER
- 8    Sec. 10.007.   EFFECTIVENESS OF MERGER
- 9    Sec. 10.008.   EFFECT OF MERGER
- 10   Sec. 10.009.   SPECIAL PROVISIONS APPLYING TO PARTNERSHIP
- 11                    MERGERS
- 12   Sec. 10.010.   SPECIAL PROVISIONS APPLYING TO NONPROFIT
- 13                    CORPORATION MERGERS
- 14                    [Sections 10.011-10.050 reserved for expansion]
- 15                    SUBCHAPTER B.  EXCHANGES OF INTERESTS
- 16   Sec. 10.051.   INTEREST EXCHANGES
- 17   Sec. 10.052.   PLAN OF EXCHANGE:  REQUIRED PROVISIONS
- 18   Sec. 10.053.   PLAN OF EXCHANGE:  PERMISSIVE PROVISIONS
- 19   Sec. 10.054.   EFFECTIVENESS OF EXCHANGE
- 20   Sec. 10.055.   GENERAL EFFECT OF INTEREST EXCHANGE
- 21   Sec. 10.056.   SPECIAL PROVISIONS APPLYING TO
- 22                    PARTNERSHIPS
- 23                    [Sections 10.057-10.100 reserved for expansion]
- 24                    SUBCHAPTER C.  CONVERSIONS
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BUSINESS ORGANIZATIONS CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS AND PURPOSE

Sec. 1.001. PURPOSE. The purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible. (New.)

Sec. 1.002. DEFINITIONS. In this code:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with another person. (TBCA 13.02.A(1).)

(2) "Associate," when used to indicate a relationship with a person, means:

(A) a domestic or foreign entity or organization for which the person:

(i) is an officer or governing person; or  
(ii) beneficially owns, directly or indirectly, either individually or through an affiliate, 10 percent or more of a class of voting ownership interests or similar



1 securities of the entity or organization;

2 (B) a trust or estate in which the person has a  
3 substantial beneficial interest or for which the person serves as  
4 trustee or in a similar fiduciary capacity;

5 (C) the person's spouse or a relative of the  
6 person related by consanguinity or affinity who resides with the  
7 person; or

8 (D) a governing person or an affiliate or officer  
9 of the person. (TBCA 1.02.A(2).)

10 (3) "Association" means an entity governed as an  
11 association under Title 6 or 7. The term includes a cooperative  
12 association, nonprofit association, and professional association.  
13 (New.)

14 (4) "Assumed name" means a name adopted for use by a  
15 person. The term includes an assumed name filed under Chapter 36,  
16 Business & Commerce Code. (New.)

17 (5) "Business" means a trade, occupation, profession,  
18 or other commercial activity. (TRPA 1.01(1).)

19 (6) "Certificate of formation" means:

20 (A) the document required to be filed with the  
21 filing officer under Chapter 3 to form a filing entity; and

22 (B) if appropriate, a restated certificate of  
23 formation and all amendments of an original or restated certificate  
24 of formation. (New.)

25 (7) "Certificated ownership interest" means an  
26 ownership interest of a domestic entity represented by a  
27 certificate issued in bearer or registered form. (TBCA 1.02.A(5).)

1           (8) "Close corporation" means a for-profit  
2 corporation that elects to be governed as a close corporation in  
3 accordance with Subchapter O, Chapter 21. (TBCA 12.02.A(1).)

4           (9) "Contribution" means a tangible or intangible  
5 benefit that a person transfers to an entity in consideration for an  
6 ownership interest in the entity or otherwise in the person's  
7 capacity as an owner or a member. The benefit includes cash,  
8 services rendered, a contract for services to be performed, a  
9 promissory note or other obligation of a person to pay cash or  
10 transfer property to the entity, or securities or other interests  
11 in or obligations of an entity, but does not include cash or  
12 property received by the entity:

13                   (A) with respect to a promissory note or other  
14 obligation to the extent that the agreed value of the note or  
15 obligation has previously been included as a contribution; or

16                   (B) that the person intends to be a loan to the  
17 entity. (TLLCA 5.01; TRLPA 1.02(2).)

18           (10) "Conversion" means:

19                   (A) the continuance of a domestic entity as a  
20 foreign entity of any type;

21                   (B) the continuance of a foreign entity as a  
22 domestic entity of any type; or

23                   (C) the continuance of a domestic entity of one  
24 type as a domestic entity of another type. (TBCA 1.02.A(8); TLLCA  
25 1.02.A(11); TRLPA 2.15(h)(1); TRPA 9.05(i)(1).)

26           (11) "Converted entity" means an entity resulting from  
27 a conversion. (TBCA 1.02.A(9); TLLCA 1.02.A(12); TRLPA 2.15(h)(2);

1 TRPA 9.05(i)(2).)

2 (12) "Converting entity" means an entity as the entity  
3 existed before the entity's conversion. (TBCA 1.02.A(10); TLLCA  
4 1.02.A(13); TRLPA 2.15(h)(3); TRPA 9.05(i)(3).)

5 (13) "Cooperative" or "cooperative association" means  
6 an association governed as a cooperative association under Chapter  
7 251. (New.)

8 (14) "Corporation" means an entity governed as a  
9 corporation under Title 2 or 7. The term includes a for-profit  
10 corporation, nonprofit corporation, and professional corporation.  
11 (TBCA 1.02.A(11); TNPCA 1.02.A(1).)

12 (15) "Debtor in bankruptcy" means a person who is the  
13 subject of:

14 (A) an order for relief under the United States  
15 bankruptcy laws (Title 11, United States Code); or

16 (B) a comparable order under a:

17 (i) successor statute of general  
18 applicability; or

19 (ii) federal or state law governing  
20 insolvency. (TRPA 1.01(4).)

21 (16) "Director" means an individual who serves on the  
22 board of directors of a foreign or domestic corporation. (TNPCA.  
23 1.02.A(14).)

24 (17) "Domestic" means, with respect to an entity, that  
25 the entity is formed under this code or the entity's internal  
26 affairs are governed by this code. (TBCA 1.02.A(11) (part); TRPA  
27 9.05(i)(4).)

1           (18) "Domestic entity" means an organization formed  
2 under or the internal affairs of which are governed by this code.  
3 (TBCA 1.02.A(11) (part); TRPA 9.05(i)(4).)

4           (19) "Domestic entity subject to dissenters' rights"  
5 means a domestic entity the owners of which have rights of dissent  
6 and appraisal under this code or the governing documents of the  
7 entity. (New.)

8           (20) "Effective date of this code" means January 1,  
9 2006. The applicability of this code is governed by Title 8.  
10 (New.)

11           (21) "Entity" means a domestic entity or foreign  
12 entity. (New.)

13           (22) "Filing entity" means a domestic entity that is a  
14 corporation, limited partnership, limited liability company,  
15 professional association, cooperative, or real estate investment  
16 trust. (New.)

17           (23) "Filing instrument" means an instrument,  
18 document, or statement that is required or authorized by this code  
19 to be filed by or for an entity with the filing officer in  
20 accordance with Chapter 4. (New.)

21           (24) "Filing officer" means:

22                   (A) with respect to an entity other than a  
23 domestic real estate investment trust, the secretary of state; or

24                   (B) with respect to a domestic real estate  
25 investment trust, the county clerk of the county in which the real  
26 estate investment trust's principal office is located in this  
27 state. (New.)

1           (25) "For-profit corporation" means a corporation  
2 governed as a for-profit corporation under Chapter 21. (TMCLA  
3 1.03.A.)

4           (26) "For-profit entity" means an entity other than a  
5 nonprofit entity. (New.)

6           (27) "Foreign" means, with respect to an entity, that  
7 the entity is formed under, and the entity's internal affairs are  
8 governed by, the laws of a jurisdiction other than this state.  
9 (TBCA 1.02.A(14); TNPCA 1.02.A(2); TRPA 9.05(i)(5).)

10          (28) "Foreign entity" means an organization formed  
11 under, and the internal affairs of which are governed by, the laws  
12 of a jurisdiction other than this state. (TBCA 1.02.A(14); TNPCA  
13 1.02.A(2).)

14          (29) "Foreign filing entity" means a foreign entity  
15 that registers or is required to register as a foreign entity under  
16 Chapter 9. (New.)

17          (30) "Foreign governmental authority" means a  
18 governmental official, agency, or instrumentality of a  
19 jurisdiction other than this state. (New.)

20          (31) "Foreign nonfiling entity" means a foreign entity  
21 that is not a foreign filing entity. (New.)

22          (32) "Fundamental business transaction" means a  
23 merger, interest exchange, conversion, or sale of all or  
24 substantially all of an entity's assets. (New.)

25          (33) "General partner" means:

26                 (A) each partner in a general partnership; or

27                 (B) a person who is admitted to a limited

1 partnership as a general partner in accordance with the governing  
2 documents of the limited partnership. (TRLPA 1.02(4).)

3 (34) "General partnership" means a partnership  
4 governed as a general partnership under Chapter 152. The term  
5 includes a limited liability partnership. (TRPA 1.01(11).)

6 (35)(A) "Governing authority" means a person or group  
7 of persons who are entitled to manage and direct the affairs of an  
8 entity under this code and the governing documents of the entity,  
9 except that if the governing documents of the entity or this code  
10 divide the authority to manage and direct the affairs of the entity  
11 among different persons or groups of persons according to different  
12 matters, "governing authority" means the person or group of persons  
13 entitled to manage and direct the affairs of the entity with respect  
14 to a matter under the governing documents of the entity or this  
15 code. The term includes:

16 (i) the board of directors of a corporation  
17 or other persons authorized to perform the functions of the board of  
18 directors of a corporation;

19 (ii) the general partners of a general  
20 partnership or limited partnership;

21 (iii) the managers of a limited liability  
22 company that is managed by managers;

23 (iv) the members of a limited liability  
24 company that is managed by members who are entitled to manage the  
25 company;

26 (v) the board of directors of a cooperative  
27 association; and

1 (vi) the trust managers of a real estate  
2 investment trust.

3 (B) The term does not include an officer who is  
4 acting in the capacity of an officer. (New.)

5 (36) "Governing documents" means:

6 (A) in the case of a domestic entity:

7 (i) the certificate of formation for a  
8 domestic filing entity or the document or agreement under which a  
9 domestic nonfiling entity is formed; and

10 (ii) the other documents or agreements  
11 adopted by the entity under this code to govern the formation or the  
12 internal affairs of the entity; or

13 (B) in the case of a foreign entity, the  
14 instruments, documents, or agreements adopted under the law of its  
15 jurisdiction of formation to govern the formation or the internal  
16 affairs of the entity. (New.)

17 (37) "Governing person" means a person serving as part  
18 of the governing authority of an entity. (New.)

19 (38) "Individual" means a natural person. (New.)

20 (39) "Insolvency" means the inability of a person to  
21 pay the person's debts as they become due in the usual course of  
22 business or affairs. (TBCA 1.02.A(16); TNPCA 1.02.A(12).)

23 (40) "Insolvent" means a person who is unable to pay  
24 the person's debts as they become due in the usual course of  
25 business or affairs. (New.)

26 (41) "Interest exchange" means the acquisition of an  
27 ownership or membership interest in a domestic entity as provided

1 by Subchapter B, Chapter 10. The term does not include a merger or  
2 conversion. (New.)

3 (42) "Internal Revenue Code" means the Internal  
4 Revenue Code of 1986, as amended. The term includes corresponding  
5 provisions of subsequent federal tax laws. (New.)

6 (43) "Jurisdiction of formation" means:

7 (A) in the case of a domestic filing entity, this  
8 state;

9 (B) in the case of a foreign filing entity, the  
10 jurisdiction in which the entity's certificate of formation or  
11 similar organizational instrument is filed; or

12 (C) in the case of a foreign or domestic  
13 nonfiling entity:

14 (i) the jurisdiction the laws of which are  
15 chosen in the entity's governing documents to govern its internal  
16 affairs if that jurisdiction bears a reasonable relation to the  
17 owners or members or to the domestic or foreign nonfiling entity's  
18 business and affairs under the principles of this state that  
19 otherwise would apply to a contract among the owners or members; or

20 (ii) if Subparagraph (i) does not apply,  
21 the jurisdiction in which the entity has its chief executive  
22 office. (TBCA 8.02 (part); TLLCA 7.02 (part); TNPCA 8.02 (part);  
23 TRLPA 9.01(a); TRPA 1.05(a), 10.01(a).)

24 (44) "Law" means, unless the context requires  
25 otherwise, both statutory and common law. (New.)

26 (45) "License" means a license, certificate of  
27 registration, or other legal authorization. (New.)



1           (46) "Limited liability company" means an entity  
2 governed as a limited liability company under Title 3 or 7. The  
3 term includes a professional limited liability company. (TLLCA  
4 1.02.A(3).)

5           (47) "Limited liability limited partnership" means a  
6 partnership governed as a limited liability partnership and a  
7 limited partnership under Title 4. (New.)

8           (48) "Limited liability partnership" means a  
9 partnership governed as a limited liability partnership under Title  
10 4. (TRPA 1.01(16).)

11           (49) "Limited partner" means a person who has been  
12 admitted to a limited partnership as a limited partner as provided  
13 by:

14                   (A) in the case of a domestic limited  
15 partnership, Chapter 153; or

16                   (B) in the case of a foreign limited partnership,  
17 the laws of its jurisdiction of formation. (TRLPA 1.02(5).)

18           (50) "Limited partnership" means a partnership  
19 governed as a limited partnership under Title 4. The term includes  
20 a limited liability limited partnership. (TRLPA 1.02(6).)

21           (51) "Manager" means a person designated as a manager  
22 of a limited liability company that is not managed by members of the  
23 company. (TLLCA 2.12 (part).)

24           (52) "Managerial official" means an officer or a  
25 governing person. (New.)

26           (53) "Member" means:

27                   (A) in the case of a limited liability company, a

1 person who is a member or has been admitted as a member in the  
2 limited liability company under its governing documents;

3 (B) in the case of a nonprofit corporation, a  
4 person who has membership rights in the nonprofit corporation under  
5 its governing documents;

6 (C) in the case of a cooperative association, a  
7 member of a nonshare or share association;

8 (D) in the case of a nonprofit association, a  
9 person who has membership rights in the nonprofit association under  
10 its governing documents; or

11 (E) in the case of a professional association, a  
12 person who has membership rights in the professional association  
13 under its governing documents. (CAA 2(2); TLLCA 4.01.A (part);  
14 TNPCA 1.02.A(6); TUUNAA 2(1).)

15 (54) "Membership interest" means a member's interest  
16 in an entity. With respect to a limited liability company, the term  
17 includes a member's share of profits and losses or similar items and  
18 the right to receive distributions, but does not include a member's  
19 right to participate in management. (TLLCA 4.04, 4.05.A.)

20 (55) "Merger" means:

21 (A) the division of a domestic entity into two or  
22 more new domestic entities or other organizations or into a  
23 surviving domestic entity and one or more new domestic or foreign  
24 entities or non-code organizations; or

25 (B) the combination of one or more domestic  
26 entities with one or more domestic entities or non-code  
27 organizations resulting in:

1 (i) one or more surviving domestic entities  
2 or non-code organizations;

3 (ii) the creation of one or more new  
4 domestic entities or non-code organizations; or

5 (iii) one or more surviving domestic  
6 entities or non-code organizations and the creation of one or more  
7 new domestic entities or non-code organizations. (TBCA 1.02.A(18);  
8 TLLCA 1.02.A(10); TRLPA 1.02(8).)

9 (56) "Non-code organization" means an organization  
10 other than a domestic entity. (TBCA 1.02.A(20); TLLCA 10.07; TRLPA  
11 2.15(h)(4); TRPA 9.05(i)(6).)

12 (57) "Nonfiling entity" means a domestic entity that  
13 is not a filing entity. The term includes a domestic general  
14 partnership and nonprofit association. (New.)

15 (58) "Nonprofit association" means an association  
16 governed as a nonprofit association under Chapter 252. (TUUNAA  
17 2(2).)

18 (59) "Nonprofit corporation" means a corporation  
19 governed as a nonprofit corporation under Chapter 22. (TNPCA  
20 1.02.A(3).)

21 (60) "Nonprofit entity" means an entity that is a  
22 nonprofit corporation, nonprofit association, or other entity that  
23 is organized solely for one or more of the purposes specified by  
24 Section 2.002. (New.)

25 (61) "Officer" means an individual elected,  
26 appointed, or designated as an officer of an entity by the entity's  
27 governing authority or under the entity's governing documents.

1 (New.)

2 (62) "Organization" means a corporation, limited or  
3 general partnership, limited liability company, business trust,  
4 real estate investment trust, joint venture, joint stock company,  
5 cooperative, association, bank, insurance company, credit union,  
6 savings and loan association, or other organization, regardless of  
7 whether the organization is for-profit, nonprofit, domestic, or  
8 foreign. (New.)

9 (63) "Owner," for purposes of Title 1, 7, or 8, means:

10 (A) with respect to a foreign or domestic  
11 for-profit corporation or real estate investment trust, a  
12 shareholder;

13 (B) with respect to a foreign or domestic  
14 partnership, a partner;

15 (C) with respect to a foreign or domestic limited  
16 liability company or professional association, a member; or

17 (D) with respect to another foreign or domestic  
18 entity, an owner of an equity interest in that entity. (New.)

19 (64) "Ownership interest" means an owner's interest in  
20 an entity. The term includes the owner's share of profits and  
21 losses or similar items and the right to receive distributions. The  
22 term does not include an owner's right to participate in  
23 management. (New.)

24 (65) "Parent" means an organization that, directly or  
25 indirectly through or with one or more of its subsidiaries:

26 (A) owns at least 50 percent of the outstanding  
27 ownership or membership interests of another organization; or

1 (B) possesses at least 50 percent of the voting  
2 power of the owners or members of another organization. (TMCLA  
3 2.06.C (part).)

4 (66) "Partner" means a limited partner or general  
5 partner. (TRLPA 1.02(9).)

6 (67) "Partnership" means an entity governed as a  
7 partnership under Title 4. (TRPA 1.01(11) (part).)

8 (68) "Partnership interest" means a partner's interest  
9 in a partnership. The term includes the partner's share of profits  
10 and losses or similar items and the right to receive distributions.  
11 The term does not include a partner's right to participate in  
12 management. (TRLPA 1.02(11); TRPA 1.01(13).)

13 (69) "Party to the merger" means a domestic entity or  
14 non-code organization that under a plan of merger is divided or  
15 combined by a merger. The term does not include a domestic entity  
16 or non-code organization that is not to be divided or combined into  
17 or with one or more domestic entities or non-code organizations,  
18 regardless of whether ownership interests of the entity are to be  
19 issued under the plan of merger. (TBCA 5.03.I(4).)

20 (70) "President" means the:

21 (A) individual designated as president of an  
22 entity under the entity's governing documents; or

23 (B) officer or committee of persons authorized to  
24 perform the functions of the principal executive officer of an  
25 entity without regard to the designated name of the officer or  
26 committee. (TNCPA 1.02.A(8).)

27 (71) "Professional association" has the meaning

1 assigned by Section 301.003. (TPAA 2(A), as amended Acts 77th Leg.,  
2 R.S., Chs. 508 and 883.)

3 (72) "Professional corporation" has the meaning  
4 assigned by Section 301.003. (TPCA 3(b).)

5 (73) "Professional entity" has the meaning assigned by  
6 Section 301.003. (TLLCA 11.01.B(4).)

7 (74) "Professional individual" has the meaning  
8 assigned by Section 301.003. (TLLCA 11.01.B(3).)

9 (75) "Professional limited liability company" has the  
10 meaning assigned by Section 301.003. (TLLCA 11.01.B(2).)

11 (76) "Professional service" has the meaning assigned  
12 by Section 301.003. (TLLCA 11.01.B(1); TPAA 3; TPCA 3(a).)

13 (77) "Property" includes tangible and intangible  
14 property and an interest in that property. (TRPA 1.01(15).)

15 (78) "Real estate investment trust" means an entity  
16 governed as a real estate investment trust under Title 5. (TREITA  
17 2.10.)

18 (79) "Secretary" means the:

19 (A) individual designated as secretary of an  
20 entity under the entity's governing documents; or

21 (B) officer or committee of persons authorized to  
22 perform the functions of secretary of an entity without regard to  
23 the designated name of the officer or committee. (TNPCA  
24 1.02.A(10).)

25 (80) "Share" means a unit into which the ownership  
26 interest in a for-profit corporation, professional corporation,  
27 real estate investment trust, or professional association is

1 divided, regardless of whether the share is certificated or  
2 uncertificated. (TBCA 1.02.A(23); TPAA 10; TPCA 12 (part); TREITA  
3 3.10(A)(7) (part).)

4 (81) "Shareholder" or "holder of shares" means the  
5 person in whose name shares issued by a for-profit corporation,  
6 professional corporation, or real estate investment trust are  
7 registered in the share transfer records maintained by the  
8 for-profit corporation, professional corporation, or real estate  
9 investment trust. (TBCA 1.02.A(22).)

10 (82) "Signature" means any symbol executed or adopted  
11 by a person with present intention to authenticate a writing.  
12 Unless the context requires otherwise, the term includes a digital  
13 signature, an electronic signature, and a facsimile of a signature.  
14 (Bus. & Com. Code 43.002(8); Gov. Code 311.005(6), 2054.060(e)(1);  
15 TMCLA 7.07.C; TRLPA 13.04(b); TRPA 3.08(b)(12).)

16 (83) "Subscriber" means a person who agrees with or  
17 makes an offer to an entity to purchase by subscription an ownership  
18 interest in the entity. (TBCA 1.02.A(25).)

19 (84) "Subscription" means an agreement between a  
20 subscriber and an entity, or a written offer made by a subscriber to  
21 an entity before or after the entity's formation, in which the  
22 subscriber agrees or offers to purchase a specified ownership  
23 interest in the entity. (TBCA 1.02.A(26).)

24 (85) "Subsidiary" means an organization for which  
25 another organization, either directly or indirectly through or with  
26 one or more of its other subsidiaries:

27 (A) owns at least 50 percent of the outstanding

1 ownership or membership interests of the organization; or

2 (B) possesses at least 50 percent of the voting  
3 power of the owners or members of the organization. (TMCLA 2.06.C  
4 (part).)

5 (86) "Treasurer" means the:

6 (A) individual designated as treasurer of an  
7 entity under the entity's governing documents; or

8 (B) officer or committee of persons authorized to  
9 perform the functions of treasurer of an entity without regard to  
10 the designated name of the officer or committee. (TNPCA  
11 1.02.A(11).)

12 (87) "Uncertificated ownership interest" means an  
13 ownership interest in a domestic entity that is not represented by  
14 an instrument and is transferred by:

15 (A) amendment of the governing documents of the  
16 entity; or

17 (B) registration on books maintained by or on  
18 behalf of the entity for the purpose of registering transfers of  
19 ownership interests. (TBCA 1.02.A(29).)

20 (88) "Vice president" means the:

21 (A) individual designated as vice president of an  
22 entity under the governing documents of the entity; or

23 (B) officer or committee of persons authorized to  
24 perform the functions of the president of the entity on the death,  
25 absence, or resignation of the president or on the inability of the  
26 president to perform the functions of office without regard to the  
27 designated name of the officer or committee. (TNPCA 1.02.A(9).)



1           (89) "Writing" or "written" means an expression of  
2 words, letters, characters, numbers, symbols, figures, or other  
3 textual information that is inscribed on a tangible medium or that  
4 is stored in an electronic or other medium that is retrievable in a  
5 perceivable form. Unless the context requires otherwise, the term:

6           (A) includes stored or transmitted electronic  
7 data and transmissions and reproductions of writings; and

8           (B) does not include sound or video recordings of  
9 speech other than transcriptions that are otherwise writings.  
10 (Bus. & Com. Code 1.201(46), 43.002(12), 43.007, 43.008(a); Gov.  
11 Code 312.011(17).)

12           Sec. 1.003. DISINTERESTED PERSON. (a) For purposes of this  
13 code, a person is disinterested with respect to the approval of a  
14 contract, transaction, or other matter, or to the consideration of  
15 the disposition of a claim or challenge relating to a contract,  
16 transaction, or particular conduct, if the person or the person's  
17 associate:

18           (1) is not a party to the contract or transaction or  
19 materially involved in the conduct that is the subject of the claim  
20 or challenge; and

21           (2) does not have a material financial interest in the  
22 outcome of the contract or transaction or the disposition of the  
23 claim or challenge.

24           (b) For purposes of Subsection (a), a person is not  
25 materially involved in a contract or transaction that is the  
26 subject of a claim or challenge and does not have a material  
27 financial interest in the outcome of a contract or transaction or

1 the disposition of a claim or challenge solely because:

2 (1) the person was nominated or elected as a governing  
3 person by a person who is:

4 (A) interested in the contract or transaction; or

5 (B) alleged to have engaged in the conduct that  
6 is the subject of the claim or challenge;

7 (2) the person receives normal fees or customary  
8 compensation, reimbursement for expenses, or benefits as a  
9 governing person of the entity;

10 (3) the person has a direct or indirect equity  
11 interest in the entity;

12 (4) the entity has, or its subsidiaries have, an  
13 interest in the contract or transaction or was affected by the  
14 alleged conduct; .

15 (5) the person or an associate of the person receives  
16 ordinary and reasonable compensation for reviewing, making  
17 recommendations regarding, or deciding on the disposition of the  
18 claim or challenge; or

19 (6) in the case of a review by the person of the  
20 alleged conduct that is the subject of the claim or challenge:

21 (A) the person is named as a defendant in the  
22 derivative proceeding regarding the matter or as a person who  
23 engaged in the alleged conduct; or

24 (B) the person, acting as a governing person,  
25 approved, voted for, or acquiesced in the act being challenged if  
26 the act did not result in a material personal or financial benefit  
27 to the person and the challenging party fails to allege particular

1 facts that, if true, raise a significant prospect that the  
2 governing person would be held liable to the entity or its owners or  
3 members as a result of the conduct. (TBCA 1.02.A(12).)

4 Sec. 1.004. INDEPENDENT PERSON. (a) For purposes of this  
5 code, a person is independent with respect to considering the  
6 disposition of a claim or challenge regarding a contract or  
7 transaction, or particular or alleged conduct, if the person:

8 (1) is disinterested;

9 (2) either:

10 (A) is not an associate, or member of the  
11 immediate family, of a party to the contract or transaction or of a  
12 person who is alleged to have engaged in the conduct that is the  
13 subject of the claim or challenge; or

14 (B) is an associate to a party or person  
15 described by Paragraph (A) that is an entity if the person is an  
16 associate solely because the person is a governing person of the  
17 entity or of the entity's subsidiaries or associates;

18 (3) does not have a business, financial, or familial  
19 relationship with a party to the contract or transaction, or with  
20 another person who is alleged to have engaged in the conduct, that  
21 is the subject of the claim or challenge that could reasonably be  
22 expected to materially and adversely affect the judgment of the  
23 person in favor of the party or other person with respect to the  
24 consideration of the matter; and

25 (4) is not shown, by a preponderance of the evidence,  
26 to be under the controlling influence of a party to the contract or  
27 transaction that is the subject of the claim or challenge or of a

1 person who is alleged to have engaged in the conduct that is the  
2 subject of the claim or challenge.

3 (b) For purposes of Subsection (a), a person does not have a  
4 relationship that could reasonably be expected to materially and  
5 adversely affect the judgment of the person regarding the  
6 disposition of a matter that is the subject of a claim or challenge  
7 and is not otherwise under the controlling influence of a party to a  
8 contract or transaction that is the subject of a claim or challenge  
9 or that is alleged to have engaged in the conduct that is the  
10 subject of a claim or challenge solely because:

11 (1) the person has been nominated or elected as a  
12 governing person by a person who is interested in the contract or  
13 transaction or alleged to be engaged in the conduct that is the  
14 subject of the claim or challenge;

15 (2) the person receives normal fees or similar  
16 customary compensation, reimbursement for expenses, or benefits as  
17 a governing person of the entity;

18 (3) the person has a direct or indirect equity  
19 interest in the entity;

20 (4) the entity has, or its subsidiaries have, an  
21 interest in the contract or transaction or was affected by the  
22 alleged conduct;

23 (5) the person or an associate of the person receives  
24 ordinary and reasonable compensation for reviewing, making  
25 recommendations regarding, or deciding on the disposition of the  
26 claim or challenge; or

27 (6) the person, an associate of the person, other than

1 the entity or its associates, or an immediate family member has a  
2 continuing business relationship with the entity that is not  
3 material to the person, associate, or family member. (TBCA  
4 1.02.A(15).)

5 Sec. 1.005. CONSPICUOUS INFORMATION. In this code, required  
6 information is conspicuous if the information is placed in a manner  
7 or displayed using a font that provides or should provide notice to  
8 a reasonable person affected by the information. Required  
9 information in a document is conspicuous if the font used for the  
10 information is capitalized, boldfaced, italicized, or underlined  
11 or is larger or of a different color than the remainder of the  
12 document. (TBCA 1.02.A(6).)

13 Sec. 1.006. SYNONYMOUS TERMS. To the extent not  
14 inconsistent with the provisions of the constitution and other  
15 statutes or codes wherein such terms may be found, and as the  
16 context requires, in this code or any other statute or code of this  
17 state:

18 (1) a reference to "articles of incorporation,"  
19 "articles of organization," "articles of association,"  
20 "certificate of limited partnership," and "charter" includes a  
21 "certificate of formation";

22 (2) a reference to "authorized capital stock" includes  
23 "authorized shares";

24 (3) a reference to "capital stock" includes  
25 "authorized and issued shares," "issued share," and "stated  
26 capital";

27 (4) a reference to a "certificate of registration,"

1 "certificate of authority," and "permit to do business" includes  
2 "registration";

3 (5) a reference to "stock" and "shares of stock"  
4 includes "shares";

5 (6) a reference to "stockholder" includes  
6 "shareholder";

7 (7) a reference to "no par stock" includes "shares  
8 without par value"; and

9 (8) a reference to "paid-up capital" includes "stated  
10 capital." (TMCLA 1.02.)

11 Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING. For  
12 purposes of this code, a writing has been signed by a person when  
13 the writing includes the person's signature. A transmission or  
14 reproduction of a writing signed by a person is considered signed by  
15 that person for purposes of this code. (TBCA 9.10.A(3); TLLCA  
16 2.23.B(2); TNPCA 9.10.C(5); TMCLA 7.07.B, C; TRLPA 13.04(b); TRPA  
17 3.08(a)(12).)

18 Sec. 1.008. SHORT TITLES. (a) The provisions of this code  
19 as described by this section may be cited as provided by this  
20 section.

21 (b) The provisions of Title 2 and the provisions of Title 1  
22 to the extent applicable to corporations may be cited as the "Texas  
23 Corporation Law."

24 (c) The provisions of Chapters 20 and 21 and the provisions  
25 of Title 1 to the extent applicable to for-profit corporations may  
26 be cited as the "Texas For-Profit Corporation Law."

27 (d) The provisions of Chapters 20 and 22 and the provisions

1 of Title 1 to the extent applicable to nonprofit corporations may be  
2 cited as the "Texas Nonprofit Corporation Law."

3 (e) The provisions of Title 3 and the provisions of Title 1  
4 to the extent applicable to limited liability companies may be  
5 cited as the "Texas Limited Liability Company Law."

6 (f) The provisions of Chapters 151, 152, and 154 and the  
7 provisions of Title 1 to the extent applicable to general  
8 partnerships may be cited as the "Texas General Partnership Law."

9 (g) The provisions of Chapters 151, 153, and 154 and the  
10 provisions of Title 1 to the extent applicable to limited  
11 partnerships may be cited as the "Texas Limited Partnership Law."

12 (h) The provisions of Title 5 and the provisions of Title 1  
13 to the extent applicable to real estate investment trusts may be  
14 cited as the "Texas Real Estate Investment Trust Law."

15 (i) The provisions of Chapter 251 and the provisions of  
16 Title 1 to the extent applicable to cooperative associations may be  
17 cited as the "Texas Cooperative Association Law."

18 (j) The provisions of Title 7 and the provisions of Titles  
19 1, 2, and 3 to the extent applicable to professional entities may be  
20 cited as the "Texas Professional Entities Law."

21 (k) The provisions of Chapter 252 may be cited as the  
22 "Uniform Unincorporated Nonprofit Association Act."

23 (l) The provisions of Chapters 301 and 302 and the  
24 provisions of Chapters 20 and 21 and Title 1 to the extent  
25 applicable to professional associations may be cited as the "Texas  
26 Professional Association Law."

27 (m) The provisions of Chapters 301 and 303 and the

1 provisions of Chapters 20 and 21 and Title 1 to the extent  
2 applicable to professional corporations may be cited as the "Texas  
3 Professional Corporation Law."

4 (n) The provisions of Chapters 301 and 304 and the  
5 provisions of Titles 1 and 3 to the extent applicable to  
6 professional limited liability companies may be cited as the "Texas  
7 Professional Limited Liability Company Law." (CAA 1; TBCA 1.01.A;  
8 TLLCA 1.01.A; TNPCA 1.01.A; TPAA 1; TPCA 1; TREITA 1.10; TRLPA 1.01;  
9 TRPA 11.01; TUUNAA 1.)

10 Sec. 1.009. DOLLARS AS MONETARY UNITS. Unless the context  
11 requires otherwise, a value or amount that is required by this code  
12 to be stated in monetary terms must be stated in United States  
13 dollars. Currency that is not specified is considered to be in  
14 United States dollars. (New.)

15 [Sections 1.010-1.050 reserved for expansion]

16 SUBCHAPTER B. CODE CONSTRUCTION

17 Sec. 1.051. CONSTRUCTION OF CODE. Chapter 311, Government  
18 Code (Code Construction Act), applies to the construction of each  
19 provision in this code except as otherwise expressly provided by  
20 this code. (New.)

21 Sec. 1.052. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A  
22 reference in a law to a statute or a part of a statute revised by  
23 this code is considered to be a reference to the part of this code  
24 that revises that statute or part of that statute. (TBCA 1.02.C.)

25 Sec. 1.053. APPLICABILITY TO FOREIGN AND INTERSTATE  
26 AFFAIRS. This code applies to the conduct of affairs with foreign  
27 countries and the other states of the United States only to the



1 extent permitted under the United States Constitution. (TBCA 9.11;  
2 TLLCA 8.09; TNPCA 10.01.)

3       Sec. 1.054. RESERVATION OF POWER. The legislature at all  
4 times has the power to amend, repeal, or modify this code and to  
5 prescribe regulations, provisions, and limitations as the  
6 legislature considers advisable. The regulations, provisions, and  
7 limitations are binding on any entity subject to this code. (TBCA  
8 9.12; TLLCA 8.10; TNPCA 10.02; TRPA 1.06.)

9               [Sections 1.055-1.100 reserved for expansion]

10               SUBCHAPTER C. DETERMINATION OF APPLICABLE LAW

11       Sec. 1.101. DOMESTIC FILING ENTITIES. The law of this state  
12 governs the formation and internal affairs of an entity if the  
13 entity's formation occurs when a certificate of formation filed in  
14 accordance with Chapter 4 takes effect. (CAA 2(1); TBCA  
15 1.02.A(11); TLLCA 1.02.A(3); TNPCA 1.02.A(1); TPAA 2(A); TPCA 6;  
16 TREITA 2.10; TRLPA 1.02(5), (6); TRPA 1.01(11); TRPA 1.05(a).)

17       Sec. 1.102. FOREIGN FILING ENTITIES. If the formation of an  
18 entity occurs when a certificate of formation or similar instrument  
19 filed with a foreign governmental authority takes effect, the law  
20 of the state or other jurisdiction in which that foreign  
21 governmental authority is located governs the formation and  
22 internal affairs of the entity. (TBCA 8.02 (part); TLLCA 7.02  
23 (part); TNPCA 8.02 (part); TRLPA 9.01(a).)

24       Sec. 1.103. ENTITIES NOT FORMED BY FILING INSTRUMENT. If  
25 the formation of an entity does not occur when a certificate of  
26 formation or similar instrument filed with the secretary of state  
27 or with a foreign governmental authority takes effect, the law

1 governing the entity's formation and internal affairs is the law of  
2 the entity's jurisdiction of formation. (TRPA 1.05(a) (part),  
3 10.01(a) (part).)

4 Sec. 1.104. LAW APPLICABLE TO LIABILITY. The law of the  
5 jurisdiction that governs an entity as determined under Sections  
6 1.101-1.103 applies to the liability of an owner, a member, or a  
7 managerial official of the entity in the capacity as an owner, a  
8 member, or a managerial official for an obligation, including a  
9 debt or other liability, of the entity for which the owner, member,  
10 or managerial official is not otherwise liable by contract or under  
11 provisions of law other than this code. (TBCA 8.02 (part); TLLCA  
12 7.02 (part); TNPCA 8.02 (part); TRLPA 9.01(a) (part); TRPA 1.05(b),  
13 10.01(a) (part).)

14 Sec. 1.105. INTERNAL AFFAIRS. For purposes of this code,  
15 the internal affairs of an entity include:

16 (1) the rights, powers, and duties of its governing  
17 authority, governing persons, officers, owners, and members; and

18 (2) matters relating to its membership or ownership  
19 interests. (TBCA 8.02 (part); TLLCA 7.02 (part); TNPCA 8.02  
20 (part); TRLPA 9.01(a).)

21 Sec. 1.106. ORDER OF PRECEDENCE. (a) This title applies to  
22 all domestic entities and foreign entities to the extent provided  
23 by this title.

24 (b) Each title of this code, other than this title, applies  
25 to a different type of entity to the extent provided by that title.

26 (c) If a provision of this title conflicts with a provision  
27 in another title of this code, the provision of the other title

1 supersedes the provision of this title. (New.)

2 CHAPTER 2. PURPOSES AND POWERS OF DOMESTIC ENTITY

3 SUBCHAPTER A. PURPOSES OF DOMESTIC ENTITY

4 Sec. 2.001. GENERAL SCOPE OF PERMISSIBLE PURPOSES. A  
5 domestic entity has any lawful purpose or purposes, unless  
6 otherwise provided by this code. (TBCA 2.01.A (part); TLLCA  
7 2.01.A; TNPCA 2.01.A (part); TRLPA 1.09(a).)

8 Sec. 2.002. PURPOSES OF NONPROFIT ENTITY. The purpose or  
9 purposes of a domestic nonprofit entity may include one or more of  
10 the following purposes:

11 (1) serving charitable, benevolent, religious,  
12 eleemosynary, patriotic, civic, missionary, educational,  
13 scientific, social, fraternal, athletic, aesthetic, agricultural,  
14 and horticultural purposes;

15 (2) operating or managing a professional, commercial,  
16 or trade association or labor union;

17 (3) providing animal husbandry; or

18 (4) operating on a nonprofit cooperative basis for the  
19 benefit of its members. (TNPCA 2.01.A (part).)

20 Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity  
21 may not:

22 (1) engage in a business or activity that:

23 (A) is expressly unlawful or prohibited by a law  
24 of this state;

25 (B) cannot lawfully be engaged in by that entity  
26 under state law; or

27 (C) may not be engaged in by an entity without

1 first obtaining a license under the laws of this state to engage in  
2 that business or activity and a license cannot lawfully be granted  
3 to the entity; or

4 (2) operate as a:

5 (A) bank;

6 (B) trust company;

7 (C) savings association;

8 (D) insurance company;

9 (E) railroad company;

10 (F) cemetery organization; or

11 (G) abstract or title company governed by Chapter  
12 9, Insurance Code. (CAA 6 (part); TBCA 2.01.B (part); TLLCA 2.01.B;  
13 TNPCA 2.01.B (part); TRLPA 1.09(b).)

14 Sec. 2.004. LIMITATION ON PURPOSES OF PROFESSIONAL ENTITY.  
15 Except as provided in Title 7, a professional entity may engage in  
16 only:

17 (1) one type of professional service, unless the  
18 entity is expressly authorized to provide more than one type of  
19 professional service under state law regulating the professional  
20 services; and

21 (2) services ancillary to that type of professional  
22 service. (Court opinion; TLLCA 11.01.A(2); TPCA 4(a) (part), 6.)

23 Sec. 2.005. LIMITATION IN GOVERNING DOCUMENTS. The  
24 governing documents of a domestic entity may contain limitations on  
25 the entity's purposes. (TLLCA 2.01.A; TRLPA 1.09(a).)

26 Sec. 2.006. PERMISSIBLE PURPOSE OF FOR-PROFIT CORPORATION  
27 RELATED TO RAILROADS. Notwithstanding Section 2.003(2)(E), a

1 for-profit corporation may:

2 (1) construct, acquire, maintain, and operate street  
3 railways, suburban railways, and belt lines of railways in or near  
4 municipalities to transport freight and passengers;

5 (2) construct, own, and operate union depots;

6 (3) buy, sell, and convey rights-of-way on which to  
7 construct railroads;

8 (4) construct, acquire, maintain, and operate lines of  
9 electric, gas, or gasoline, denatured alcohol, or naphtha motor  
10 railways in and between municipalities, and interurban railways in  
11 and between municipalities in this state to transport freight or  
12 passengers;

13 (5) build, maintain, and operate a line of railroads  
14 to mines, gins, quarries, manufacturing plants, or mills;

15 (6) construct, maintain, and operate terminal  
16 railways; or

17 (7) operate a railroad passenger service by  
18 contracting with a railroad corporation or other company that does  
19 not construct, own, or maintain a railroad track. (TBCA 2.01.C;  
20 TMCLA 3.05.)

21 Sec. 2.007. ADDITIONAL PROHIBITED ACTIVITIES OF FOR-PROFIT  
22 CORPORATION. A for-profit corporation may not:

23 (1) operate a cooperative association, limited  
24 cooperative association, or labor union;

25 (2) transact a combination of the businesses of:

26 (A) raising cattle and owning land for the  
27 raising of cattle, other than operating and owning feedlots and

1 feeding cattle; and

2 (B) operating stockyards and slaughtering,  
3 refrigerating, canning, curing, or packing meat; or

4 (3) engage in a combination of:

5 (A) the petroleum oil producing business in this  
6 state; and

7 (B) the oil pipeline business in this state other  
8 than through stock ownership in a for-profit corporation engaged in  
9 the oil pipeline business and other than the ownership or operation  
10 of private pipelines in and about the corporation's refineries,  
11 fields, or stations. (TBCA 2.01.B (part).)

12 Sec. 2.008. NONPROFIT CORPORATIONS. A corporation formed  
13 for the purpose of operating a nonprofit institution, including an  
14 institution devoted to a charitable, benevolent, religious,  
15 patriotic, civic, cultural, missionary, educational, scientific,  
16 social, fraternal, athletic, or aesthetic purpose, may be formed  
17 and governed only as a nonprofit corporation under this code and not  
18 as a for-profit corporation under this code. (TBCA 2.01.A (part).)

19 Sec. 2.009. PERMISSIBLE PURPOSE OF NONPROFIT CORPORATION  
20 RELATED TO ORGANIZED LABOR. Subject to Chapter 101, Labor Code, a  
21 nonprofit corporation may be formed to organize laborers, workers,  
22 or wage earners to protect themselves in their various pursuits.  
23 (TNPCA 2.01.A (part).)

24 Sec. 2.010. PROHIBITED ACTIVITIES OF NONPROFIT  
25 CORPORATION. A nonprofit corporation may not be organized or  
26 registered under this code to conduct its affairs in this state to:

27 (1) engage in or operate as a group hospital service,

1 rural credit union, agricultural and livestock pool, mutual loan  
2 corporation, cooperative association under Chapter 251,  
3 cooperative credit association, farmers' cooperative society,  
4 Co-operative Marketing Act corporation, rural electric cooperative  
5 corporation, telephone cooperative corporation, or fraternal  
6 organization operating under the lodge system and incorporated  
7 under Subchapter C, Chapter 23; or

8 (2) engage in water supply or sewer service as an  
9 entity incorporated under Chapter 67, Water Code. (TNPCA 2.01.B  
10 (part).)

11 Sec. 2.011. PURPOSES OF COOPERATIVE ASSOCIATION. (a) A  
12 person may organize a cooperative association under this code to  
13 acquire, produce, build, operate, manufacture, furnish, exchange,  
14 or distribute any type of property, commodities, goods, or services  
15 for the primary and mutual benefit of the members of the cooperative  
16 association.

17 (b) A cooperative association may not be organized to:

18 (1) serve or function as a health maintenance  
19 organization;

20 (2) furnish medical or health care; or

21 (3) employ or contract with a health care provider in a  
22 manner prohibited by the statute under which the provider is  
23 licensed.

24 (c) A cooperative association may not directly or  
25 indirectly engage in a health maintenance organization or a prepaid  
26 legal service corporation. (CAA 5, 6 (part), 26(b) (part).)

27 Sec. 2.012. LIMITATION ON PURPOSES OF REAL ESTATE

1 INVESTMENT TRUST. The purposes of a real estate investment trust  
2 are limited by Section 3.012. (TREITA 3.10(A) (part).)

3 [Sections 2.013-2.100 reserved for expansion]

4 SUBCHAPTER B. POWERS OF DOMESTIC ENTITY

5 Sec. 2.101. GENERAL POWERS. Except as otherwise provided by  
6 this code, a domestic entity has the same powers as an individual to  
7 take action necessary or convenient to carry out its business and  
8 affairs. Except as otherwise provided by this code, the powers of a  
9 domestic entity include the power to:

10 (1) sue, be sued, and defend suit in the entity's  
11 business name;

12 (2) have and alter a seal and use the seal or a  
13 facsimile of it by impressing, affixing, or reproducing it;

14 (3) acquire, receive, own, hold, improve, use, and  
15 deal in and with property or an interest in property;

16 (4) sell, convey, mortgage, pledge, lease, exchange,  
17 and otherwise dispose of property;

18 (5) make contracts and guarantees;

19 (6) incur liabilities, borrow money, issue notes,  
20 bonds, or other obligations, which may be convertible into, or  
21 include the option to purchase, other securities or ownership  
22 interests in the entity, and secure its obligations by mortgaging  
23 or pledging its property, franchises, or income;

24 (7) lend money, invest its funds, and receive and hold  
25 property as security for repayment if the loan or assistance  
26 reasonably may be expected to benefit, directly or indirectly, the  
27 entity;



1           (8) acquire its own bonds, debentures, or other  
2 evidences of indebtedness or obligations;

3           (9) acquire its own ownership interests, regardless of  
4 whether redeemable, and hold the ownership interests as treasury  
5 ownership interests or cancel or dispose of the ownership  
6 interests;

7           (10) be a promoter, organizer, owner, partner, member,  
8 associate, or manager of an organization;

9           (11) acquire, receive, own, hold, vote, use, pledge,  
10 and dispose of ownership interests in or securities issued by  
11 another person;

12           (12) conduct its business, locate its offices, and  
13 exercise the powers granted by this code to further its purposes, in  
14 or out of this state;

15           (13) lend money to, and otherwise assist, its  
16 managerial officials, owners, members, or employees as necessary or  
17 appropriate;

18           (14) elect or appoint officers and agents of the  
19 entity, establish the length of their terms, define their duties,  
20 and fix their compensation;

21           (15) pay pensions and establish pension plans, pension  
22 trusts, profit-sharing plans, bonus plans, and incentive plans for  
23 managerial officials, owners, members, or employees or former  
24 managerial officials, owners, members, or employees;

25           (16) indemnify and maintain liability insurance for  
26 managerial officials, owners, members, employees, and agents of the  
27 entity or the entity's affiliate;

1           (17) adopt and amend governing documents for managing  
2 the affairs of the entity subject to applicable law;

3           (18) make donations for the public welfare or for a  
4 charitable, scientific, or educational purpose;

5           (19) voluntarily wind up its business and activities  
6 and terminate its existence;

7           (20) transact business or take action that will aid  
8 governmental policy; and

9           (21) take other action necessary or appropriate to  
10 further the purposes of the entity. (TBCA 2.02.A (part); TLLCA  
11 2.02.A, 2.11; TNPCA 2.02.A (part); TPAA 5; TREITA 6.10(A); TRPA  
12 3.01 (part), 3.05(a).)

13       Sec. 2.102. ADDITIONAL POWERS OF NONPROFIT ENTITY OR  
14 INSTITUTION. To effect its purposes, a domestic nonprofit entity or  
15 institution formed for a religious, charitable, educational, or  
16 eleemosynary purpose may acquire, own, hold, mortgage, and dispose  
17 of and invest its funds in property for the use and benefit of,  
18 under the discretion of, and in trust for a convention, conference,  
19 or association organized under the laws of this state or another  
20 state with which it is affiliated or by which it is controlled.  
21 (TNPCA 2.02.A (part).)

22       Sec. 2.103. POWER TO INCUR INDEBTEDNESS. (a) Unless  
23 otherwise provided by its governing documents or this code, a  
24 domestic entity may create indebtedness for any consideration the  
25 entity considers appropriate, including:

26           (1) cash;

27           (2) property;

1 (3) a contract to receive property;

2 (4) a debt or other obligation of the entity or of  
3 another person;

4 (5) services performed or a contract for services to  
5 be performed; or

6 (6) a direct or indirect benefit realized by the  
7 entity.

8 (b) In the absence of fraud in the transaction, the judgment  
9 of the governing authority of a domestic entity as to the value of  
10 the consideration received by the entity for indebtedness is  
11 conclusive.

12 (c) The consideration for the indebtedness may be received  
13 either directly or indirectly by the domestic entity, including by  
14 a domestic or foreign organization that is wholly or partially  
15 owned, directly or indirectly, by the domestic entity.

16 (d) This section does not apply to indebtedness created by a  
17 domestic entity that is incurred by reason of the authorization or  
18 payment of a distribution. (TLLCA 8.12.B; TMCLA 2.06.A.)

19 Sec. 2.104. POWER TO MAKE GUARANTIES. (a) In this section,  
20 "guaranty" means a mortgage, pledge, security agreement, or other  
21 agreement making the domestic entity or its assets secondarily  
22 liable for another person's contract, security, or other  
23 obligation.

24 (b) Unless otherwise provided by its governing documents or  
25 this code, a domestic entity may:

26 (1) make a guaranty on behalf of a parent, subsidiary,  
27 or affiliate of the entity; or

1           (2) make a guaranty of the indebtedness of another  
2 person if the guaranty may reasonably be expected directly or  
3 indirectly to benefit the entity.

4           (c) For purposes of Subsection (b)(2), a decision by the  
5 governing authority of the domestic entity that a guaranty may  
6 reasonably be expected to benefit the entity is conclusive and not  
7 subject to attack by any person, except:

8           (1) a guaranty may not be enforced by a person who  
9 participated in a fraud on the domestic entity resulting in the  
10 making of the guaranty or by a person who had notice of that fraud at  
11 the time the person acquired rights under the guaranty;

12           (2) a proposed guaranty may be enjoined at the request  
13 of an owner of the domestic entity on the ground that the guaranty  
14 cannot reasonably be expected to benefit the domestic entity; or

15           (3) the domestic entity, whether acting directly or  
16 through a receiver, trustee, or other legal representative, or  
17 through an owner on behalf of the domestic entity, may bring suit  
18 for damages against the managerial officials, owners, or members  
19 who authorized the guaranty on the ground that the guaranty could  
20 not reasonably be expected to benefit the domestic entity.

21           (d) This section does not:

22           (1) apply to a domestic entity governed by the  
23 Insurance Code; or

24           (2) authorize a domestic entity that is not governed  
25 by the Insurance Code to engage in a business or transaction  
26 regulated by the Insurance Code. (TLLCA 8.12.B; TMCLA 2.06.B, C,  
27 D.)

1           Sec. 2.105. ADDITIONAL POWERS OF CERTAIN PIPELINE  
2 BUSINESSES. In addition to the powers provided by the other  
3 sections of this subchapter, a corporation, general partnership,  
4 limited partnership, limited liability company, or other  
5 combination of those entities engaged as a common carrier in the  
6 pipeline business for the purpose of transporting oil, oil  
7 products, gas, carbon dioxide, salt brine, fuller's earth, sand,  
8 clay, liquefied minerals, or other mineral solutions has all the  
9 rights and powers conferred on a common carrier by Sections  
10 111.019-111.022, Natural Resources Code. (TBCA 2.01.B (part);  
11 TLLCA 2.02.D; TRLPA 1.09(c); TRPA 3.01 (part).)

12           Sec. 2.106. POWER OF NONPROFIT CORPORATION TO SERVE AS  
13 TRUSTEE. (a) A nonprofit corporation that is described by Section  
14 501(c)(3) or 170(c), Internal Revenue Code, or a corresponding  
15 provision of a subsequent federal tax law, or a nonprofit  
16 corporation listed by the Internal Revenue Service in the  
17 Cumulative List of Organizations Described in Section 170(c) of the  
18 Internal Revenue Code of 1986, I.R.S. Publication 78, or any  
19 successor I.R.S. publication, may serve as the trustee of a trust:

20                   (1) of which the nonprofit corporation is a  
21 beneficiary; or

22                   (2) benefiting another organization described by one  
23 of those sections of the Internal Revenue Code, or a corresponding  
24 provision of a subsequent federal tax law, or listed by the Internal  
25 Revenue Service in the Cumulative List of Organizations Described  
26 in Section 170(c) of the Internal Revenue Code of 1986, I.R.S.  
27 Publication 78, or any successor I.R.S. publication.

1           (b) Any corporation (or person or entity assisting such  
2 corporation) described in this section shall have immunity from  
3 suit (including both a defense to liability and the right not to  
4 bear the cost, burden, and risk of discovery and trial) as to any  
5 claim alleging that the corporation's role as trustee of a trust  
6 described in this section constitutes engaging in the trust  
7 business in a manner requiring a state charter as defined in Section  
8 181.002(a)(9), Finance Code. An interlocutory appeal may be taken  
9 if a court denies or otherwise fails to grant a motion for summary  
10 judgment that is based on an assertion of the immunity provided in  
11 this subsection. (TNPCA 2.31.)

12           Sec. 2.107. STANDARD TAX PROVISIONS FOR CERTAIN CHARITABLE  
13 NONPROFIT CORPORATIONS; POWER TO EXCLUDE. (a) Notwithstanding any  
14 conflicting provision of this chapter, Chapter 3, or the  
15 certificate of formation and except as provided by Subsection (b),  
16 the certificate of formation of each corporation that is a private  
17 foundation as defined by Section 509, Internal Revenue Code, is  
18 considered to contain the following provisions: "The corporation  
19 shall make distributions at the time and in the manner as not to  
20 subject it to tax under Section 4942 of the Internal Revenue Code of  
21 1986; the corporation shall not engage in any act of self-dealing  
22 which would be subject to tax under Section 4941 of the Code; the  
23 corporation shall not retain any excess business holdings which  
24 would subject it to tax under Section 4943 of the Code; the  
25 corporation shall not make any investments which would subject it  
26 to tax under Section 4944 of the Code; and the corporation shall not  
27 make any taxable expenditures which would subject it to tax under

1 Section 4945 of the Code."

2 (b) A nonprofit corporation described by Subsection (a) may  
3 amend the certificate of formation of the corporation to expressly  
4 exclude the application of Subsection (a). (TNPCA 2.27.A, B.)

5 Sec. 2.108. POWERS OF PROFESSIONAL ASSOCIATION. Except as  
6 provided by Title 7, a professional association has the same  
7 powers, privileges, duties, restrictions, and liabilities as a  
8 for-profit corporation. (TPAA 25 (part).)

9 Sec. 2.109. POWERS OF PROFESSIONAL CORPORATION. Except as  
10 provided by Title 7, a professional corporation has the same  
11 powers, privileges, duties, restrictions, and liabilities as a  
12 for-profit corporation. (TPCA 5 (part).)

13 Sec. 2.110. POWERS OF COOPERATIVE ASSOCIATION. (a) Except  
14 as provided by Chapter 251, a cooperative association may exercise  
15 the same powers and privileges and is subject to the same duties,  
16 restrictions, and liabilities as a nonprofit corporation.

17 (b) A cooperative association may:

18 (1) own and hold membership in other associations or  
19 corporations;

20 (2) own and hold share capital of other associations  
21 or corporations;

22 (3) own and exercise ownership rights in bonds or  
23 other obligations;

24 (4) make agreements of mutual aid or federation with  
25 other associations, other groups organized on a cooperative basis,  
26 or other nonprofit groups; and

27 (5) deliver money to a scholarship fund for rural

1 students. (CAA 6 (part).)

2           Sec. 2.111. LIMITATION ON POWERS OF COOPERATIVE  
3 ASSOCIATION. Except for the payment of necessary legal fees or  
4 promotion expenses, a cooperative association may not directly or  
5 indirectly use its funds, issue shares, or incur indebtedness for  
6 the payment of compensation for the organization of the cooperative  
7 association in excess of five percent of the amount paid for the  
8 shares or membership certificates involved in the promotion  
9 transaction. (CAA 40(a).)

10           Sec. 2.112. STATED POWERS IN SUBCHAPTER SUFFICIENT. A  
11 domestic entity is not required to state any of the powers provided  
12 to the entity by this subchapter in its governing documents. (TBCA  
13 3.02.B; TLLCA 3.02.B; TNPCA 3.02.C.)

14           Sec. 2.113. LIMITATION ON POWERS. (a) This subchapter does  
15 not authorize a domestic entity or a managerial official of a  
16 domestic entity to exercise a power in a manner inconsistent with a  
17 limitation on the purposes or powers of the entity contained in its  
18 governing documents, this code, or other law of this state.

19           (b) This code does not authorize any action in violation of  
20 the antitrust laws of this state. (TBCA 2.02.B, C; TLLCA 2.02.B, C;  
21 TNPCA 2.02.B, C; TREITA 6.10(B), (C).)

22           Sec. 2.114. CERTIFICATED INDEBTEDNESS; MANNER OF ISSUANCE;  
23 SIGNATURE AND SEAL. (a) Except as otherwise provided by the  
24 governing documents of the domestic entity, this code, or other  
25 law, on the issuance by a domestic entity of a bond, debenture, or  
26 other evidence of indebtedness in certificated form, the seal of  
27 the entity, if the entity has adopted a seal, may be a facsimile



1 that may be engraved or printed on the certificate.

2 (b) Except as otherwise provided by the governing documents  
3 of the domestic entity, this code, or other law, if a security  
4 described by Subsection (a) is authenticated with the manual  
5 signature of an authorized officer of the domestic entity or an  
6 authorized officer or representative, to the extent permitted by  
7 law, of a transfer agent or trustee appointed or named by an  
8 indenture of trust or other agreement under which the security is  
9 issued, the signature of any officer of the domestic entity may be a  
10 facsimile signature.

11 (c) A security described by Subsection (a) that contains the  
12 manual or facsimile signature of a person who is no longer an  
13 officer when the security is delivered by the entity may be adopted,  
14 issued, and delivered by the entity in the same manner and to the  
15 same extent as if the person had remained an officer of the entity.  
16 (TLLCA 8.12.B; TMCLA 2.05.)

17 CHAPTER 3. FORMATION AND GOVERNANCE

18 SUBCHAPTER A. FORMATION, EXISTENCE, AND

19 CERTIFICATE OF FORMATION

20 Sec. 3.001. FORMATION AND EXISTENCE OF FILING ENTITIES. (a)  
21 Subject to the other provisions of this code, to form a filing  
22 entity, a certificate of formation complying with Sections 3.003,  
23 3.004, and 3.005 must be filed in accordance with Chapter 4.

24 (b) The filing of a certificate of formation described by  
25 Subsection (a) may be included in a filing under Chapter 10.

26 (c) The existence of a filing entity commences when the  
27 filing of the certificate of formation takes effect as provided by

## 1 Chapter 4.

2 (d) Except in a proceeding by the state to terminate the  
3 existence of a filing entity, an acknowledgment of the filing of a  
4 certificate of formation issued by the filing officer is conclusive  
5 evidence of:

6 (1) the formation and existence of the filing entity;

7 (2) the satisfaction of all conditions precedent to  
8 the formation of the filing entity; and

9 (3) the authority of the filing entity to transact  
10 business in this state. (CAA 9(a), (b); TBCA 3.03.A, 3.04; TLLCA  
11 3.01, 3.03.A, 3.04, 11.01.A(1) (part); TNPCA 3.03.A, 3.04; TPAA  
12 12(A), 13; TPCA 4(a) (part); TREITA 3.10(B); TRLPA 2.01(a) (part),  
13 (b).)

14 Sec. 3.002. FORMATION AND EXISTENCE OF NONFILING ENTITIES.  
15 The requirements for the formation of and the determination of the  
16 existence of a nonfiling entity are governed by the title of this  
17 code that applies to that entity. (New.)

18 Sec. 3.003. DURATION. A domestic entity exists perpetually  
19 unless otherwise provided in the governing documents of the entity.  
20 A domestic entity may be terminated in accordance with this code or  
21 the Tax Code. (TBCA 2.02.A (part); TLLCA 2.02.A; TNPCA 2.02.A  
22 (part); TPCA 17 (part).)

23 Sec. 3.004. ORGANIZERS. (a) Any person having the capacity  
24 to contract for the person or for another may be an organizer of a  
25 filing entity.

26 (b) Each organizer of a filing entity must sign the  
27 certificate of formation of the filing entity, except that:

1           (1) each general partner must sign the certificate of  
2 formation of a domestic limited partnership; and

3           (2) each trust manager must sign and acknowledge  
4 before an officer who is authorized by law to take acknowledgment of  
5 a deed the certificate of formation of a domestic real estate  
6 investment trust. (TBCA 3.01 (part); TLLCA 3.01 (part); TNPCA  
7 3.01.A (part); TREITA 3.10(A) (part); TRLPA 2.01(a) (part).)

8           Sec. 3.005. CERTIFICATE OF FORMATION. (a) The certificate  
9 of formation must state:

10           (1) the name of the filing entity being formed;

11           (2) the type of filing entity being formed;

12           (3) for filing entities other than limited  
13 partnerships, the purpose or purposes for which the filing entity  
14 is formed, which may be stated to be or include any lawful purpose  
15 for that type of entity;

16           (4) for filing entities other than limited  
17 partnerships, the period of duration, if the entity is not formed to  
18 exist perpetually;

19           (5) the street address of the initial registered  
20 office of the filing entity and the name of the initial registered  
21 agent of the filing entity at the office;

22           (6) the name and address of each:

23           (A) organizer for the filing entity, unless the  
24 entity is formed under a plan of conversion or merger;

25           (B) general partner, if the filing entity is a  
26 limited partnership; or

27           (C) trust manager, if the filing entity is a real

1 estate investment trust;

2 (7) if the filing entity is formed under a plan of  
3 conversion or merger, a statement to that effect and, if formed  
4 under a plan of conversion, the name, address, date of formation,  
5 prior form of organization, and jurisdiction of formation of the  
6 converting entity; and

7 (8) any other information required by this code to be  
8 included in the certificate of formation for the filing entity.

9 (b) The certificate of formation may contain other  
10 provisions not inconsistent with law relating to the organization,  
11 ownership, governance, business, or affairs of the filing entity.

12 (c) Except as provided by Section 3.004, Chapter 4 governs  
13 the signing and filing of a certificate of formation for a domestic  
14 entity. (TBCA 3.02.A (part); TLLCA 3.02.A (part), 11.01.A(1)  
15 (part); TNPCA 3.02.A (part); TPAA 8(A) (part); TPCA 4(a) (part);  
16 TREITA 3.10(A) (part); TRLPA 2.01(a) (part).)

17 Sec. 3.006. FILINGS IN CASE OF MERGER OR CONVERSION. (a) If  
18 a new domestic filing entity is formed under a plan of conversion or  
19 merger, the certificate of formation of the entity must be filed  
20 with the certificate of conversion or merger under Section  
21 10.155(a) or 10.153(a). The certificate of formation is not  
22 required to be filed separately under Section 3.001.

23 (b) The formation and existence of a domestic filing entity  
24 that is a converted entity in a conversion or that is to be created  
25 under a plan of merger takes effect and commences on the  
26 effectiveness of the conversion or merger, as appropriate. (TBCA  
27 3.03.C (part), 3.04.B; TLLCA 3.03.C (part), 3.04.B; TRLPA 2.01(b)

1 (part), 2.11(e) (part), 2.15(c) (part).)

2 Sec. 3.007. SUPPLEMENTAL PROVISIONS REQUIRED IN  
3 CERTIFICATE OF FORMATION OF FOR-PROFIT CORPORATION. (a) In  
4 addition to the information required by Section 3.005, the  
5 certificate of formation of a for-profit corporation must state:

6 (1) the aggregate number of shares the corporation is  
7 authorized to issue;

8 (2) if the shares the corporation is authorized to  
9 issue consist of one class of shares only, the par value of each  
10 share or a statement that each share is without par value;

11 (3) if the corporation is to be managed by a board of  
12 directors, the number of directors constituting the initial board  
13 of directors and the name and address of each person who will serve  
14 as director until the first annual meeting of shareholders and  
15 until a successor is elected and qualified; and

16 (4) if the corporation is to be managed pursuant to a  
17 shareholders' agreement in a manner other than by a board of  
18 directors, the name and address of each person who will perform the  
19 functions required by this code to be performed by the initial board  
20 of directors.

21 (b) If the shares a for-profit corporation is authorized to  
22 issue consist of more than one class of shares, the certificate of  
23 formation of the for-profit corporation must, with respect to each  
24 class, state:

25 (1) the designation of the class;

26 (2) the aggregate number of shares in the class;

27 (3) the par value of each share or a statement that

1 each share is without par value;

2 (4) the preferences, limitations, and relative rights  
3 of the shares; and

4 (5) if the shares in a class the corporation is  
5 authorized to issue consist of more than one series, the following  
6 with respect to each series:

7 (A) the designation of the series;

8 (B) the aggregate number of shares in the series;

9 (C) any preferences, limitations, and relative  
10 rights of the shares to the extent provided in the certificate of  
11 formation; and

12 (D) any authority vested in the board of  
13 directors to establish the series and set and determine the  
14 preferences, limitations, and relative rights of the series.

15 (c) If the shareholders of a for-profit corporation are to  
16 have a preemptive right or cumulative voting right, the certificate  
17 of formation of the for-profit corporation must comply with Section  
18 21.203 or 21.360, as appropriate. (TBCA 3.02.A (part).)

19 Sec. 3.008. SUPPLEMENTAL PROVISIONS REQUIRED IN  
20 CERTIFICATE OF FORMATION OF CLOSE CORPORATION. (a) In addition to a  
21 provision required or permitted to be stated in the certificate of  
22 formation of a for-profit corporation under Section 3.007, the  
23 certificate of formation of a close corporation, whether original,  
24 amended, or restated, must include the sentence, "This corporation  
25 is a close corporation."

26 (b) The certificate of formation of the close corporation  
27 may contain:

1           (1) a provision contained or permitted to be contained  
2 in a shareholders' agreement conforming to Subchapter O, Chapter  
3 21, that the organizers elect to include in the certificate of  
4 formation; or

5           (2) a copy of a shareholders' agreement that conforms  
6 to Subchapter O, Chapter 21, and that may be filed in the manner  
7 provided by Section 21.212.

8           (c) A provision contained in the certificate of formation  
9 under Subsection (b) must be preceded by a statement that the  
10 provision is subject to the corporation remaining a close  
11 corporation. (TBCA 3.02.A (part), 12.11.)

12           Sec. 3.009. SUPPLEMENTAL PROVISIONS REQUIRED IN  
13 CERTIFICATE OF FORMATION OF NONPROFIT CORPORATION. In addition to  
14 the information required by Section 3.005, the certificate of  
15 formation of a nonprofit corporation must include:

16           (1) if the nonprofit corporation is to have no  
17 members, a statement to that effect;

18           (2) if management of the nonprofit corporation's  
19 affairs is to be vested in the nonprofit corporation's members, a  
20 statement to that effect;

21           (3) the number of directors constituting the initial  
22 board of directors and the names and addresses of those directors  
23 or, if the management of the nonprofit corporation is vested solely  
24 in the nonprofit corporation's members, a statement to that effect;  
25 and

26           (4) if the nonprofit corporation is to be authorized  
27 on its winding up to distribute the nonprofit corporation's assets

1 in a manner other than as provided by Section 22.304, a statement  
2 describing the manner of distribution. (TNPCA 3.02.A (part).)

3 Sec. 3.010. SUPPLEMENTAL PROVISIONS REQUIRED IN  
4 CERTIFICATE OF FORMATION OF LIMITED LIABILITY COMPANY. In addition  
5 to the information required by Section 3.005, the certificate of  
6 formation of a limited liability company must state:

7 (1) whether the limited liability company will or will  
8 not have managers;

9 (2) if the limited liability company will have  
10 managers, the name and address of each initial manager of the  
11 limited liability company; and

12 (3) if the limited liability company will not have  
13 managers, the name and address of each initial member of the limited  
14 liability company. (TLLCA 3.02.A (part).)

15 Sec. 3.011. SUPPLEMENTAL PROVISIONS REGARDING CERTIFICATE  
16 OF FORMATION OF LIMITED PARTNERSHIP. (a) To form a limited  
17 partnership, the partners must enter into a partnership agreement  
18 and file a certificate of formation.

19 (b) The partners of a limited partnership formed under  
20 Section 10.001 or 10.101 may include the partnership agreement  
21 required under Subsection (a) in the plan of merger or conversion.

22 (c) A certificate of formation for a limited partnership  
23 must include the address of the principal office of the partnership  
24 in the United States where records are to be kept or made available  
25 under Section 153.551.

26 (d) The fact that a certificate of formation is on file with  
27 the secretary of state is notice that the partnership is a limited



1 partnership and of all other facts contained in the certificate as  
2 required by Section 3.005. (TRLPA 2.01(a) (part), 2.09.)

3           Sec. 3.012. SUPPLEMENTAL PROVISIONS REQUIRED IN  
4 CERTIFICATE OF FORMATION OF REAL ESTATE INVESTMENT TRUST. In  
5 addition to the information required by Section 3.005, the  
6 certificate of formation of a real estate investment trust must  
7 state:

8           (1) that an assumed name certificate stating the name  
9 of the real estate investment trust has been filed in the manner  
10 provided by law;

11           (2) that the purpose of the real estate investment  
12 trust is to:

13                   (A) purchase, hold, lease, manage, sell,  
14 exchange, develop, subdivide, and improve real property and  
15 interests in real property, other than severed mineral, oil, or gas  
16 royalty interests, and carry on any other business and perform any  
17 other action in connection with a purpose described by this  
18 paragraph;

19                   (B) exercise powers conferred by the laws of this  
20 state on a real estate investment trust; and

21                   (C) perform any action described by Chapter 200  
22 or Title 1 to the same extent as an individual;

23           (3) the post office address of the initial principal  
24 office and place of business of the real estate investment trust;

25           (4) the aggregate number of shares of beneficial  
26 interest the real estate investment trust is authorized to issue  
27 and the par value to be received by the real estate investment trust

1 for the issuance of each share;

2 (5) if shares described by Subdivision (4) are divided  
3 into classes as authorized by Section 200.102 or 200.103, a  
4 description of each class of shares, including any preferences,  
5 conversion and other rights, voting powers, restrictions,  
6 limitations as to dividends, qualifications, and terms and  
7 conditions of redemption; and

8 (6) that the trust managers shall manage the money or  
9 property received for the issuance of shares for the benefit of the  
10 shareholders of the real estate investment trust. (TREITA 3.10(A)  
11 (part).)

12 Sec. 3.013. SUPPLEMENTAL PROVISIONS REQUIRED IN  
13 CERTIFICATE OF FORMATION OF COOPERATIVE ASSOCIATION. In addition to  
14 the information required by Section 3.005, the certificate of  
15 formation of a cooperative association must state:

16 (1) whether the cooperative association is organized  
17 with or without shares;

18 (2) the number of shares or memberships subscribed for  
19 the cooperative association;

20 (3) if the cooperative association is organized with  
21 shares:

22 (A) the amount of authorized capital;

23 (B) the number and type of shares;

24 (C) par value of the shares, if any; and

25 (D) the rights, preferences, and restrictions of  
26 each type of share;

27 (4) the method of distribution on winding up and

1 termination of any surplus of the cooperative association in  
2 accordance with Section 251.403; and

3 (5) the names and street addresses of the directors  
4 who will manage the affairs of the cooperative association for the  
5 initial year, unless sooner changed by the members. (CAA 8(b)  
6 (part).)

7 Sec. 3.014. SUPPLEMENTAL PROVISIONS REQUIRED IN  
8 CERTIFICATE OF FORMATION OF PROFESSIONAL ENTITY. In addition to the  
9 information required by Section 3.005, the certificate of formation  
10 of a professional entity must state:

11 (1) the type of professional service to be provided by  
12 the professional entity as the purpose of the entity; and

13 (2) that the professional entity is a:

14 (A) professional association;

15 (B) professional corporation; or

16 (C) professional limited liability company.

17 (TLLCA 11.01.A(1) (part); TPAA 8(A) (part); TPCA 4(a) (part).)

18 Sec. 3.015. SUPPLEMENTAL PROVISIONS REQUIRED IN  
19 CERTIFICATE OF FORMATION OF PROFESSIONAL ASSOCIATION. (a) In  
20 addition to containing the information required under Sections  
21 3.005 and 3.014, the certificate of formation of a professional  
22 association must:

23 (1) be signed by each member of the association; and

24 (2) state:

25 (A) the name and address of each original member  
26 of the association; and

27 (B) that a member of the association may not

1 dissolve the association independently of other members of the  
2 association.

3 (b) The certificate of formation of a professional  
4 association may contain:

5 (1) provisions regarding shares or units of ownership  
6 in the association;

7 (2) provisions governing the winding up and  
8 termination of the association's business; and

9 (3) any other provision consistent with state law  
10 regulating the internal affairs of a professional association.  
11 (TPAA 8(A) (part), (B), (C), (D), (E).)

12 [Sections 3.016-3.050 reserved for expansion]

13 SUBCHAPTER B. AMENDMENTS AND RESTATEMENTS OF

14 CERTIFICATE OF FORMATION

15 Sec. 3.051. RIGHT TO AMEND CERTIFICATE OF FORMATION. (a) A  
16 filing entity may amend its certificate of formation.

17 (b) An amended certificate of formation may contain only  
18 provisions that:

19 (1) would be permitted at the time of the amendment if  
20 the amended certificate of formation were a newly filed original  
21 certificate of formation; or

22 (2) effect a change, exchange, reclassification, or  
23 cancellation in the membership or ownership interests or the rights  
24 of owners or members of the filing entity. (TBCA 4.01.A; TLLCA  
25 3.05.A; TNPCA 4.01; TPAA 14(A); TREITA 22.10(A); TRLPA 2.02(a)  
26 (part).)

27 Sec. 3.052. PROCEDURES TO AMEND CERTIFICATE OF FORMATION.

1 (a) The procedure to adopt an amendment to the certificate of  
2 formation is as provided by the title of this code that applies to  
3 the entity.

4 (b) A filing entity that amends its certificate of formation  
5 shall sign and file, in the manner required by Chapter 4, a  
6 certificate of amendment complying with Section 3.053 or a restated  
7 certificate of formation complying with Section 3.059. (TBCA 4.05;  
8 TLLCA 3.07.A; TNPCA 4.04; TPAA 16; TREITA 22.50; TRLPA 2.02(a)  
9 (part).)

10 Sec. 3.053. CERTIFICATE OF AMENDMENT. A certificate of  
11 amendment for a filing entity must state:

12 (1) the name of the filing entity;

13 (2) the type of the filing entity;

14 (3) for each provision of the certificate of formation  
15 that is added, altered, or deleted, an identification by reference  
16 or description of the added, altered, or deleted provision and, if  
17 the provision is added or altered, a statement of the text of the  
18 amended or added provision;

19 (4) that the amendment or amendments have been  
20 approved in the manner required by this code and the governing  
21 documents of the entity; and

22 (5) any other matter required by the provisions of  
23 this code applicable to the filing entity to be in the certificate  
24 of amendment. (TBCA 4.04.B; TLLCA 3.06.B; TNPCA 4.03; TPAA 15;  
25 TREITA 22.40(B); TRLPA 2.02(a).)

26 Sec. 3.054. SUPPLEMENTAL PROVISIONS FOR CERTIFICATE OF  
27 AMENDMENT OF FOR-PROFIT CORPORATION. (a) In addition to the

1 statements required by Section 3.053, a certificate of amendment  
2 for a for-profit corporation must state:

3 (1) if the amendment provides for an exchange,  
4 reclassification, or cancellation of issued shares, the manner in  
5 which the exchange, reclassification, or cancellation of the issued  
6 shares will be effected if the manner is not specified in the  
7 amendment; and

8 (2) if the amendment effects a change in the amount of  
9 stated capital, the manner in which the change in the amount of  
10 stated capital is effected and the amount of stated capital  
11 expressed in dollar terms as changed by the amendment.

12 (b) An officer shall sign the certificate of amendment on  
13 behalf of the for-profit corporation. If shares of the for-profit  
14 corporation have not been issued and the certificate of amendment  
15 is adopted by the board of directors, a majority of the directors  
16 may sign the certificate of amendment on behalf of the for-profit  
17 corporation. (TBCA 4.04.A, B (part).)

18 Sec. 3.055. SUPPLEMENTAL PROVISIONS FOR CERTIFICATE OF  
19 AMENDMENT OF REAL ESTATE INVESTMENT TRUST. (a) In addition to the  
20 statements required by Section 3.053, a certificate of amendment  
21 for a real estate investment trust must state:

22 (1) if the amendment provides for an exchange,  
23 reclassification, or cancellation of issued shares, the manner in  
24 which the exchange, reclassification, or cancellation of the issued  
25 shares will be effected if the manner is not specified in the  
26 amendment; and

27 (2) if the amendment effects a change in the amount of

1 stated capital, the manner in which the change in the amount of  
2 stated capital is effected and the amount of stated capital  
3 expressed in dollar terms as changed by the amendment.

4 (b) If shares of the real estate investment trust have not  
5 been issued and the certificate of amendment is adopted by the trust  
6 managers, a majority of the trust managers may execute the  
7 certificate of amendment on behalf of the real estate investment  
8 trust. (TREITA 22.40(A), (B) (part).)

9 Sec. 3.056. EFFECT OF FILING OF CERTIFICATE OF AMENDMENT.

10 (a) An amendment to a certificate of formation takes effect when  
11 the filing of the certificate of amendment takes effect as provided  
12 by Chapter 4.

13 (b) An amendment to a certificate of formation does not  
14 affect:

15 (1) an existing cause of action in favor of or against  
16 the entity for which the certificate of amendment is sought;

17 (2) a pending suit to which the entity is a party; or

18 (3) an existing right of a person other than an  
19 existing owner.

20 (c) If the name of an entity is changed by amendment, an  
21 action brought by or against the entity in the former name of the  
22 entity does not abate because of the name change. (TBCA 4.06; TLLCA  
23 3.08; TNPCA 4.05; TPAA 17; TREITA 22.60; TRLPA 2.02(e).)

24 Sec. 3.057. RIGHT TO RESTATE CERTIFICATE OF FORMATION. (a)  
25 A filing entity may restate its certificate of formation.

26 (b) An amendment effected by a restated certificate of  
27 formation must comply with Section 3.051(b). (TBCA 4.07.A (part);

1 TLLCA 3.09.A (part); TNPCA 4.06.A (part); TREITA 22.70(A) (part);  
2 TRLPA 2.10(a), (e).)

3       - Sec. 3.058. PROCEDURES TO RESTATE CERTIFICATE OF FORMATION.

4 (a) The procedure to adopt a restated certificate of formation is  
5 governed by the title of this code that applies to the entity.

6 (b) A filing entity that restates its certificate of  
7 formation shall sign and file, in the manner required by Chapter 4,  
8 a restated certificate of formation and accompanying statements  
9 complying with Section 3.059. (TBCA 4.07.A (part), D; TLLCA 3.09.A  
10 (part), D; TNPCA 4.06.A (part), D; TREITA 22.70(A) (part); TRLPA  
11 2.10(b) (part).)

12       Sec. 3.059. RESTATED CERTIFICATE OF FORMATION. (a) A  
13 restated certificate of formation must accurately state the text of  
14 the previous certificate of formation, regardless of whether the  
15 certificate of formation is an original, corrected, or restated  
16 certificate, and include:

17 (1) each previous amendment to the certificate being  
18 restated that is carried forward; and

19 (2) each new amendment to the certificate being  
20 restated.

21 (b) A restated certificate of formation may omit:

22 (1) the name and address of each organizer other than  
23 the name and address of each general partner of a limited  
24 partnership or trust manager of a real estate investment trust; and

25 (2) any other information that may be omitted under  
26 the provisions of this code applicable to the filing entity.

27 (c) A restated certificate of formation that does not make



1 new amendments to the certificate of formation being restated must  
2 be accompanied by:

3 (1) a statement that the restated certificate of  
4 formation accurately states the text of the certificate of  
5 formation being restated, as amended, restated, and corrected,  
6 except for information omitted under Subsection (b); and

7 (2) any other information required by other provisions  
8 of this code applicable to the filing entity.

9 (d) A restated certificate of formation that makes new  
10 amendments to the certificate of formation being restated must:

11 (1) be accompanied by a statement that each new  
12 amendment has been made in accordance with this code;

13 (2) identify by reference or description each added,  
14 altered, or deleted provision;

15 (3) be accompanied by a statement that each amendment  
16 has been approved in the manner required by this code and the  
17 governing documents of the entity;

18 (4) be accompanied by a statement that the restated  
19 certificate of formation:

20 (A) accurately states the text of the certificate  
21 of formation being restated and each amendment to the certificate  
22 of formation being restated that is in effect, as further amended by  
23 the restated certificate of formation; and

24 (B) does not contain any other change in the  
25 certificate of formation being restated except for information  
26 omitted under Subsection (b); and

27 (5) include any other information required by the

1 title of this code applicable to the entity. (TBCA 4.07.A (part), B  
2 (part), C (part); TLLCA 3.09.A (part), B (part), C (part); TNPCA  
3 4.06.A (part), B (part), C (part); TREITA 22.70(A) (part), (B)  
4 (part), (C) (part); TRLPA 2.10(b) (part), (c).)

5           Sec. 3.060. SUPPLEMENTAL PROVISIONS FOR RESTATED  
6 CERTIFICATE OF FORMATION FOR FOR-PROFIT CORPORATION. (a) In  
7 addition to the provisions authorized or required by Section 3.059,  
8 a restated certificate of formation for a for-profit corporation  
9 may update the current number of directors and the names and  
10 addresses of the persons serving as directors.

11           (b) An officer shall sign the restated certificate of  
12 formation on behalf of the corporation. If shares of the  
13 corporation have not been issued and the restated certificate of  
14 formation is adopted by the board of directors, the majority of the  
15 directors may sign the restated certificate of formation on behalf  
16 of the corporation. (TBCA 4.07.B (part), C (part).)

17           Sec. 3.061. SUPPLEMENTAL PROVISIONS FOR RESTATED  
18 CERTIFICATE OF FORMATION FOR NONPROFIT CORPORATION. (a) In  
19 addition to the provisions authorized or required by Section 3.059,  
20 a restated certificate of formation for a nonprofit corporation may  
21 update the current number of directors and the names and addresses  
22 of the persons serving as directors.

23           (b) If the nonprofit corporation is a church in which  
24 management is vested in the church's members under Section 22.202,  
25 and the original certificate of formation is not required to  
26 contain a statement to that effect, any restated certificate of  
27 formation for the church must contain a statement to that effect in

1 addition to the information required by Section 3.059. (TNPCA  
2 4.06.B (part), C (part).)

3 Sec. 3.062. SUPPLEMENTAL PROVISIONS FOR RESTATED  
4 CERTIFICATE OF FORMATION FOR REAL ESTATE INVESTMENT TRUST. In  
5 addition to the provisions authorized or required by Section 3.059,  
6 a restated certificate of formation for a real estate investment  
7 trust may update the current number of trust managers and the names  
8 and addresses of the persons serving as trust managers. (TREITA  
9 22.70(B) (part), (C) (part).)

10 Sec. 3.063. EFFECT OF FILING OF RESTATED CERTIFICATE OF  
11 FORMATION. (a) A restated certificate of formation takes effect  
12 when the filing of the restated certificate of formation takes  
13 effect as provided by Chapter 4.

14 (b) On the date the restated certificate of formation takes  
15 effect, the original certificate of formation and each prior  
16 amendment or restatement of the certificate of formation is  
17 superseded and the restated certificate of formation is the  
18 effective certificate of formation.

19 (c) Sections 3.056(b) and (c) apply to an amendment effected  
20 by a restated certificate of formation. (TBCA 4.07.F; TLLCA  
21 3.09.F; TNPCA 4.06.F; TREITA 22.70(E); TRLPA 2.10(d).)

22 [Sections 3.064-3.100 reserved for expansion]

23 SUBCHAPTER C. GOVERNING PERSONS AND OFFICERS

24 Sec. 3.101. GOVERNING AUTHORITY. Subject to the title of  
25 this code that governs the domestic entity and the governing  
26 documents of the domestic entity, the governing authority of a  
27 domestic entity manages and directs the business and affairs of the

1 domestic entity. (TBCA 2.31 (part); TLLCA 2.12 (part); TNPCA  
2 2.14.A (part); TRLPA 4.03(a); TRPA 4.01(d) (part).)

3 Sec. 3.102. RIGHTS OF GOVERNING PERSONS IN CERTAIN CASES.

4 (a) In discharging a duty or exercising a power, a governing  
5 person, including a governing person who is a member of a committee,  
6 may, in good faith and with ordinary care, rely on information,  
7 opinions, reports, or statements, including financial statements  
8 and other financial data, concerning a domestic entity or another  
9 person and prepared or presented by:

10 (1) an officer or employee of the entity;

11 (2) legal counsel;

12 (3) a certified public accountant;

13 (4) an investment banker;

14 (5) a person who the governing person reasonably  
15 believes possesses professional expertise in the matter; or

16 (6) a committee of the governing authority of which  
17 the governing person is not a member.

18 (b) A governing person may not in good faith rely on the  
19 information described by Subsection (a) if the governing person has  
20 knowledge of a matter that makes the reliance unwarranted. (TBCA  
21 2.41.D; TNPCA 2.26.C (part), 2.28.B (part), C; TREITA 15.10(C),  
22 (D).)

23 Sec. 3.103. OFFICERS. (a) Officers of a domestic entity may  
24 be elected or appointed in accordance with the governing documents  
25 of the entity or by the governing authority of the entity unless  
26 prohibited by the governing documents.

27 (b) An officer of an entity shall perform the duties in the

1 management of the entity and has the authority as provided by the  
2 governing documents of the entity or the governing authority that  
3 elects or appoints the officer.

4 (c) A person may simultaneously hold any two or more offices  
5 of an entity unless prohibited by this code or the governing  
6 documents of the entity. (CAA 22 (part); TBCA 2.42.A (part), B;  
7 TLLCA 2.21.A, B; TNPCA 2.20.A (part), B; TPAA 9(G) (part); TREITA  
8 4.10(F) (part).)

9 Sec. 3.104. REMOVAL OF OFFICERS. (a) Unless otherwise  
10 provided by the governing documents of a domestic entity, an  
11 officer may be removed for or without cause by the governing  
12 authority or as provided by the governing documents of the entity.  
13 The removal of an officer does not prejudice any contract rights of  
14 the person removed.

15 (b) Election or appointment of an officer does not by itself  
16 create contract rights. (TBCA 2.43; TNPCA 2.21; TREITA 4.10(F)  
17 (part).)

18 Sec. 3.105. RIGHTS OF OFFICERS IN CERTAIN CASES. (a) In  
19 discharging a duty or exercising a power, an officer of a domestic  
20 entity may, in good faith and ordinary care, rely on information,  
21 opinions, reports, or statements, including financial statements  
22 and other financial data, concerning the entity or another person  
23 and prepared or presented by:

- 24 (1) another officer or an employee of the entity;  
25 (2) legal counsel;  
26 (3) a certified public accountant;  
27 (4) an investment banker; or

1 (5) a person who the officer reasonably believes  
2 possesses professional expertise in the matter.

3 (b) An officer may not in good faith rely on the information  
4 described by Subsection (a) if the officer has knowledge of a matter  
5 that makes the reliance unwarranted. (TBCA 2.42.C; TNPCA 2.20.D  
6 (part), E.)

7 [Sections 3.106-3.150 reserved for expansion]

8 SUBCHAPTER D. RECORDKEEPING OF FILING ENTITIES

9 Sec. 3.151. BOOKS AND RECORDS FOR ALL FILING ENTITIES. (a)

10 Each filing entity shall keep:

11 (1) books and records of accounts;

12 (2) minutes of the proceedings of the owners or  
13 members or governing authority of the filing entity and committees  
14 of the owners or members or governing authority of the filing  
15 entity;

16 (3) at its registered office or principal place of  
17 business, or at the office of its transfer agent or registrar, a  
18 current record of the name and mailing address of each owner or  
19 member of the filing entity; and

20 (4) other books and records as required by the title of  
21 this code governing the entity.

22 (b) The books, records, minutes, and ownership or  
23 membership records of any filing entity, including those described  
24 in Subsection (a)(4), may be in written form or another form capable  
25 of being converted into written form within a reasonable time.

26 (c) The records required by Subsection (a)(2) need not be  
27 maintained by a limited partnership or a limited liability company

1 except to the extent required by its governing documents. (TBCA  
2 2.44.A (part); TLLCA 2.22.A (part), B; TNPCA 2.23.A; TREITA  
3 18.10(A); TRLPA 1.07(a) (part), (b).)

4 Sec. 3.152. GOVERNING PERSON'S RIGHT OF INSPECTION. (a) A  
5 governing person of a filing entity may examine the entity's books  
6 and records maintained under Section 3.151 and other books and  
7 records of the entity for a purpose reasonably related to the  
8 governing person's service as a governing person.

9 (b) A court may require a filing entity to open the books and  
10 records of the filing entity, including the books and records  
11 maintained under Section 3.151, to permit a governing person to  
12 inspect, make copies of, or take extracts from the books and records  
13 on a showing by the governing person that:

14 (1) the person is a governing person of the entity;

15 (2) the person demanded to inspect the entity's books  
16 and records;

17 (3) the person's purpose for inspecting the entity's  
18 books and records is reasonably related to the person's service as a  
19 governing person; and

20 (4) the entity refused the person's good faith demand  
21 to inspect the books and records.

22 (c) A court may award a governing person attorney's fees and  
23 any other proper relief in a suit to require a filing entity to open  
24 its books and records under Subsection (b).

25 (d) This section does not apply to limited partnerships.  
26 Section 153.552 applies to limited partnerships. (TBCA 2.44.B.)

27 Sec. 3.153. RIGHT OF EXAMINATION BY OWNER OR MEMBER. Each

1 owner or member of a filing entity may examine the books and records  
2 of the filing entity maintained under Section 3.151 and other books  
3 and records of the filing entity to the extent provided by the  
4 governing documents of the entity and the title of this code  
5 governing the filing entity. (TBCA 2.44.C; TLLCA 2.22.D, E; TNPCA  
6 2.23.B; TREITA 18.10(B).)

7 [Sections 3.154-3.200 reserved for expansion]

8 SUBCHAPTER E. CERTIFICATES REPRESENTING OWNERSHIP INTEREST

9 Sec. 3.201. CERTIFICATED OR UNCERTIFICATED OWNERSHIP  
10 INTEREST; APPLICABILITY. (a) Ownership interests in a domestic  
11 entity may be certificated or uncertificated.

12 (b) The ownership interests in a for-profit corporation,  
13 real estate investment trust, or professional corporation must be  
14 certificated unless the governing documents of the entity or a  
15 resolution adopted by the governing authority of the entity states  
16 that the ownership interests are uncertificated. If a domestic  
17 entity changes the form of its ownership interests from  
18 certificated to uncertificated, a certificated ownership interest  
19 subject to the change becomes an uncertificated ownership interest  
20 only after the certificate is surrendered to the domestic entity.

21 (c) Ownership interests in a domestic entity, other than a  
22 domestic entity described by Subsection (b), are uncertificated  
23 unless this code or the governing documents of the domestic entity  
24 state that the interests are certificated.

25 (d) Sections 3.202-3.205 do not apply to a partnership or a  
26 limited liability company except to the extent that the governing  
27 documents of the partnership or limited liability company specify.



1           (e) The governing documents of a partnership or a limited  
2 liability company may:

3           (1) provide that an owner's ownership interest may be  
4 evidenced by a certificate of ownership interest issued by the  
5 entity;

6           (2) provide for the assignment or transfer of  
7 ownership interests represented by certificates; and

8           (3) make other provisions with respect to the  
9 certificate. (TBCA 2.19.A (part); TLLCA 4.05.B; TREITA 7.20(A)  
10 (part); TRLPA 7.02(c); TRPA 5.02(b).)

11           Sec. 3.202. FORM AND VALIDITY OF CERTIFICATES; ENFORCEMENT  
12 OF ENTITY'S RIGHTS. (a) A certificate representing the ownership  
13 interest in a domestic entity may contain an impression of the seal  
14 of the entity, if any. A facsimile of the entity's seal may be  
15 printed or lithographed on the certificate.

16           (b) If a domestic entity is authorized to issue ownership  
17 interests of more than one class or series, each certificate  
18 representing ownership interests that is issued by the entity must  
19 conspicuously state on the front or back of the certificate:

20           (1) the designations, preferences, limitations, and  
21 relative rights of the ownership interests of each class or series  
22 to the extent they have been determined and the authority of the  
23 governing authority to make those determinations as to subsequent  
24 series; or

25           (2) that the information required by Subdivision (1)  
26 is stated in the domestic entity's governing documents and that the  
27 domestic entity, on written request to the entity's principal place

1 of business or registered office, will provide a free copy of that  
2 information to the record holder of the certificate.

3 (c) A certificate representing ownership interests must  
4 state on the front of the certificate:

5 (1) that the domestic entity is organized under the  
6 laws of this state;

7 (2) the name of the person to whom the certificate is  
8 issued;

9 (3) the number and class of ownership interests and  
10 the designation of the series, if any, represented by the  
11 certificate; and

12 (4) if the ownership interests are shares, the par  
13 value of each share represented by the certificate, or a statement  
14 that the shares are without par value.

15 (d) A certificate representing ownership interests that is  
16 subject to a restriction, placed by or agreed to by the domestic  
17 entity under this code, or otherwise contained in its governing  
18 documents, on the transfer or registration of the transfer of the  
19 ownership interests must:

20 (1) conspicuously state or provide a summary of the  
21 restriction on the front of the certificate;

22 (2) state the restriction on the back of the  
23 certificate and conspicuously refer to that statement on the front  
24 of the certificate; or

25 (3) conspicuously state on the front or back of the  
26 certificate that a restriction exists pursuant to a specified  
27 document and:

1 (A) that the domestic entity, on written request  
2 to the entity's principal place of business, will provide a free  
3 copy of the document to the certificate record holder; or

4 (B) if the document has been filed in accordance  
5 with this code, that the document:

6 (i) is on file with the secretary of state  
7 or, in the case of a real estate investment trust, with the county  
8 clerk of the county in which the real estate investment trust's  
9 principal place of business is located; and

10 (ii) contains a complete statement of the  
11 restriction.

12 (e) A domestic entity that fails to provide to the record  
13 holder of a certificate within a reasonable time a document as  
14 required by Subsection (d)(3)(A) may not enforce the entity's  
15 rights under the restriction imposed on the certificated ownership  
16 interests. (TBCA 2.19.A (part), B (part), C, G; TREITA 7.20(A)  
17 (part), (B), (C), (F), (G).)

18 Sec. 3.203. SIGNATURE REQUIREMENT. (a) The managerial  
19 official or officials of a domestic entity authorized by the  
20 governing documents of the entity to sign certificated ownership  
21 interests of the entity must sign any certificate representing an  
22 ownership interest in the entity.

23 (b) A certificated ownership interest that contains the  
24 manual or facsimile signature of a person who is no longer a  
25 managerial official of a domestic entity when the certificate is  
26 issued may be issued by the entity in the same manner and with the  
27 same effect as if the person had remained a managerial official.

1 (TBCA 2.19.A (part); TREITA 7.20(A) (part).)

2 Sec. 3.204. DELIVERY REQUIREMENT. A domestic entity shall  
3 deliver a certificate representing a certificated ownership  
4 interest to which the owner is entitled. (TBCA 2.19.A (part);  
5 TREITA 7.20(A) (part).)

6 Sec. 3.205. NOTICE FOR UNCERTIFICATED OWNERSHIP INTEREST.

7 (a) Except as provided by Subsection (c) and in accordance with  
8 Chapter 8, Business & Commerce Code, after issuing or transferring  
9 an uncertificated ownership interest, a domestic entity shall  
10 notify the owner of the ownership interest in writing of any  
11 information required under this subchapter to be stated on a  
12 certificate representing the ownership interest.

13 (b) Except as otherwise expressly provided by law, the  
14 rights and obligations of the owner of an uncertificated ownership  
15 interest are the same as the rights and obligations of the owner of  
16 a certificated ownership interest of the same class and series.

17 (c) A domestic entity is not required to send a notice under  
18 Subsection (a) if:

19 (1) the required information is included in the  
20 governing documents of the entity; and

21 (2) the owner of the uncertificated ownership interest  
22 is provided with a copy of the governing documents. (TBCA 2.19.D  
23 (part); TREITA 7.20(D) (part).)

#### 24 CHAPTER 4. FILINGS

##### 25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 4.001. SIGNATURE AND DELIVERY. (a) A filing  
27 instrument must be:

1           (1) signed by a person authorized by this code to act  
2 on behalf of the entity in regard to the filing instrument; and

3           (2) delivered to the secretary of state in person or by  
4 mail, courier, facsimile or electronic transmission, or any other  
5 comparable form of delivery.

6           (b) A person authorized by this code to sign a filing  
7 instrument for an entity is not required to show evidence of the  
8 person's authority as a requirement for filing. (TBCA 2.06.B  
9 (part), C (part), D, 2.07.B (part), 2.10.B (part), 2.10-1.B (part),  
10 2.12.C(2) (part), (3) (part), 2.13.D (part), E (part), 2.22.E(2)  
11 (part), 3.01, 3.03.A (part), C (part), 4.05.A (part), 4.07.D  
12 (part), 4.10.B (part), C (part), 4.11.B (part), C (part), 4.12.B  
13 (part), C (part), 4.14.B (part), C (part), 5.03.L (part), 5.04.A  
14 (part), B, 5.16.B (part), C, 5.17.E (part), 5.18.A (part), B, 6.01  
15 (part), 6.02, 6.05.B (part), 6.07.A (part), 7.01.E (part), 7.12.E  
16 (part), 8.06.A (part), 8.09.A (part), B (part), D (part), 8.13.A,  
17 B, D, 8.14.A (part), B, C, 8.15.A (part), 8.16.E (part), 10.01.B  
18 (part), 10.03.A (part), B (part), 12.22.B (part), 12.34.B (part);  
19 TLLCA 2.04.B (part), 2.06.B (part), D (part), 2.07.B (part), 3.01,  
20 3.03.A (part), C (part), 3.06.A, 3.07.A (part), 3.09.D (part),  
21 6.08.A (part), 7.06.A (part), 7.08.A, B, D, 7.09.A (part), B,  
22 7.10.A (part), 7.11.E (part), 8.12.A, B, 9.01.B (part), 9.03.B,  
23 10.03.A (part), B (part), 10.05.B (part), C (part), 10.09.B,  
24 11.01.A (part), 11.07.A (part); TNPCA 2.04A.B, 2.06.D (part),  
25 2.06A.A (part), B (part), 3.03.A (part), 4.03.A (part), 4.04.A  
26 (part), 4.06.D (part), 5.04.A (part), B (part), 6.05.A (part),  
27 6.06.A (part), 7.01.E (part), 8.05.A (part), 8.08.A (part), B

1 (part), D (part), 8.12.A, B, D, 8.14.A (part), 8.15.E (part),  
2 10.07.B (part), C (part); TMCLA 7.01, 7.03.A (part); TPAA 8(E),  
3 12(A) (part), 15 (part), 16(A) (part), 18 (part), 19(A) (part), 21  
4 (part); TPCA 4(a) (part), 19A(a); TRLPA 1.05(a), (b) (part), (d)  
5 (part), 1.06(b) (part), (c) (part), (f) (part), (h) (part), (i)  
6 (part), 2.01(a) (part), 2.02(a) (part), (f) (part), 2.03(a) (part),  
7 2.04(a), (b), 2.06(c) (part), 2.07(a) (part), 2.10(b) (part),  
8 2.11(d) (part), (e) (part), 2.12.B, 2.14(b) (part), 2.15(e) (part),  
9 9.02(a) (part), 9.06 (part), 9.09, 13.05(a) (part), (b) (part),  
10 13.07(a) (part), 13.09(a) (part); TRPA 3.08(b) (part), (e), 9.01(a)  
11 (part), (b) (part), 9.02(d) (part), (e) (part), 9.05(e) (part),  
12 10.02(a) (part), (b), (c) (part), (f) (part), (g) (part), (k)  
13 (part), 10.05(b) (part), (c) (part), (f) (part), (h) (part), (i)  
14 (part); TREITA 3.10(A) (part), (B) (part), 5.10(B) (part), (C)  
15 (part), (F) (part), 7.40(F) (part), 19.20(A) (part), (B), 22.40(A),  
16 22.50, 22.70(D), 23.40(A) (part), (B), 26.10(C) (part), (D) (part),  
17 27.10(A) (part), (B).)

18 Sec. 4.002. ACTION BY SECRETARY OF STATE. (a) If the  
19 secretary of state finds that a filing instrument delivered under  
20 Section 4.001 conforms to the provisions of this code that apply to  
21 the entity and to applicable rules adopted under Section 12.001 and  
22 that all required fees have been paid, the secretary of state shall:

23 (1) file the instrument by accepting it into the  
24 filing system adopted by the secretary of state and assigning the  
25 instrument a date of filing; and

26 (2) deliver a written or electronic acknowledgment of  
27 filing to the entity or its representative.

1 (b) If a duplicate copy of the filing instrument is  
 2 delivered to the secretary of state, on accepting the filing  
 3 instrument, the secretary of state shall return the duplicate copy,  
 4 endorsed with the word "Filed" and the month, day, and year of  
 5 filing, to the entity or its representative with the acknowledgment  
 6 of filing. (TBCA 2.06.B (part), 2.10.B (part), D (part), 2.10-1.B  
 7 (part), 2.12.C(3) (part), 2.13.E (part), 2.22.E(2) (part), 3.03.A,  
 8 B, C (part), 4.05, 4.07.D (part), E, 4.10.C, 4.11.C, 4.12.C, 5.03.L  
 9 (part), 5.04.C, 5.17.E (part), 5.18.C, 6.01 (part), 6.05.C, 6.07.A  
 10 (part), B (part), 7.01.E (part), 8.06.A (part), B, 8.09.B (part), D  
 11 (part), 8.15.A (part), 8.16.D (part), E (part), 10.01.B (part),  
 12 10.03.B (part), 12.22.C, 12.34.C; TLLCA 2.04.B (part), 2.06.B  
 13 (part), 2.07.B (part), 3.03, 3.07, 3.09.D, E, 6.08.A (part), B  
 14 (part), 7.06.A (part), B, 7.10, 7.11.D (part), 8.12.A, B, 10.03.B,  
 15 10.09.C, 11.07.A (part), B; TMCLA 7.03, 7.08; TNPCA 2.06.B (part),  
 16 D (part), 2.06A.B (part), 3.03.A (part), B, 4.04.A (part), B,  
 17 4.06.D (part), E, 5.04.B (part), C, 6.06.A (part), B (part), 7.01.E  
 18 (part), 8.05.A (part), B, 8.08.B (part), D (part), 8.14.A (part), B  
 19 (part), 8.15.D (part), E (part), 9.01.E, 9.02.G, 10.07.C (part);  
 20 TPAA 12(A) (part), (B), 16(A) (part), (B), 19(A) (part), (B); TPCA  
 21 19A(a) (part), (b); TRLPA 1.06(c) (part), (g) (part), (i) (part),  
 22 2.07(a) (part), (c), 2.11(e) (part), 9.03(a), 9.09, 13.04(c),  
 23 13.05(d) (part), 13.07(b), 13.08(a) (part), 13.09(b); TRPA  
 24 3.08(b)(8), (9) (part), (16), (18), 9.02(e) (part), 9.05(f),  
 25 10.02(h), (i) (part), 10.05(c) (part), (e), (g), (i) (part).)

26 Sec. 4.003. FILING OR ISSUANCE OF REPRODUCTION OR  
 27 FACSIMILE. (a) A photographic, photostatic, facsimile,

1 electronic, or similar reproduction of a filing instrument,  
2 signature, acknowledgment of filing, or communication may be filed  
3 or issued in place of:

- 4 (1) an original filing instrument;
- 5 (2) an original signature on a filing instrument; or
- 6 (3) an original acknowledgment of filing or other  
7 written communication from the secretary of state relating to a  
8 filing instrument.

9 (b) To the extent any filing or action on a filing conforms  
10 to this subchapter, a filing instrument or an acknowledgment of  
11 filing issued by the secretary of state is not required to be on  
12 paper or to be reduced to printed form. (TLLCA 8.12.B; TMCLA 7.07;  
13 TRLPA 9.02(a) (part), 13.04; TRPA 3.08(b)(12), (16), (17), (18),  
14 10.02(1).)

15 Sec. 4.004. TIME FOR FILING. Unless this code prescribes a  
16 specific period for filing, an entity shall promptly file each  
17 filing instrument that this code requires the entity to file. (TBCA  
18 9.07.A; TLLCA 8.07.)

19 Sec. 4.005. CERTIFICATES AND CERTIFIED COPIES. (a) A  
20 court, public office, or official body shall accept a certificate  
21 issued as provided by this code by the secretary of state or a copy  
22 of a filing instrument accepted by the secretary of state for filing  
23 as provided by this code that is certified by the secretary of state  
24 as prima facie evidence of the facts stated in the certificate or  
25 instrument.

26 (b) A court, public office, or official body may record a  
27 certificate or certified copy described by Subsection (a).



1 (c) A court, public office, or official body shall accept a  
2 certificate issued under an official seal by the secretary of state  
3 as to the existence or nonexistence of facts that relate to an  
4 entity that would not appear from a certified copy of a filing  
5 instrument as prima facie evidence of the existence or nonexistence  
6 of the facts stated in the certificate. (TBCA 9.05; TLLCA 8.05;  
7 TNPCA 9.06.)

8 Sec. 4.006. FORMS ADOPTED BY SECRETARY OF STATE. (a) The  
9 secretary of state may adopt forms for a filing instrument or a  
10 report authorized or required by this code to be filed with the  
11 secretary of state.

12 (b) A person is not required to use a form adopted by the  
13 secretary of state unless this code expressly requires use of that  
14 form. (TBCA 9.06; TLLCA 8.06; TNPCA 9.07; TPA 21 (part); TRLPA  
15 13.05(b) (part), (d) (part); TRPA 3.08(b)(10), 10.02(j).)

16 Sec. 4.007. LIABILITY FOR FALSE FILING INSTRUMENTS. (a) A  
17 person may recover damages, court costs, and reasonable attorney's  
18 fees if the person incurs a loss and:

19 (1) the loss is caused by a:

20 (A) forged filing instrument; or

21 (B) filed filing instrument that constitutes an  
22 offense under Section 4.008; or

23 (2) the person reasonably relies on:

24 (A) a false statement of material fact in a filed  
25 filing instrument; or

26 (B) the omission in a filed filing instrument of  
27 a material fact required by this code to be included in the

1 instrument.

2 (b) A person may recover under Subsection (a) from:

3 (1) each person who forged the forged filing  
4 instrument or signed the filing instrument and knew when the  
5 instrument was signed of the false statement or omission;

6 (2) any managerial official of the entity who directed  
7 the signing and filing of the filing instrument who knew or should  
8 have known when the instrument was signed or filed of the false  
9 statement or omission; or

10 (3) the entity that authorizes the filing of the  
11 filing instrument. (TRLPA 2.08, 9.05.)

12 Sec. 4.008. OFFENSE; PENALTY. (a) A person commits an  
13 offense if the person signs or directs the filing of a filing  
14 instrument that the person knows is materially false with intent  
15 that the filing instrument be delivered on behalf of an entity to  
16 the secretary of state for filing.

17 (b) An offense under this section is a Class A misdemeanor  
18 unless the actor's intent is to defraud or harm another, in which  
19 event the offense is a state jail felony. (TBCA 10.02; TLLCA 9.02;  
20 TNPCA 9.03A; TPAA 26; TRPA 3.08(b)(13), 10.02(m).)

21 Sec. 4.009. FILINGS BY REAL ESTATE INVESTMENT TRUST. (a) A  
22 filing instrument relating to a domestic real estate investment  
23 trust must be filed with the county clerk of the county in which the  
24 domestic real estate investment trust's principal place of business  
25 is located.

26 (b) Subject to other state law governing the requirements  
27 for filing instruments with a county clerk, this chapter applies to

1 a filing by a domestic real estate investment trust, except that in  
 2 relation to such a filing a reference in this chapter to the  
 3 secretary of state is considered to be a reference to the county  
 4 clerk of the county in which the domestic real estate investment  
 5 trust's principal place of business is located.

6 (c) A filing instrument relating to a foreign real estate  
 7 investment trust must be filed with the secretary of state and not a  
 8 county clerk. (TREITA 3.10(B) (part), 19.20(B), 22.50, 28.10(A).)

9 [Sections 4.010-4.050 reserved for expansion]

10 SUBCHAPTER B. WHEN FILINGS TAKE EFFECT

11 Sec. 4.051. GENERAL RULE. A filing instrument submitted to  
 12 the secretary of state takes effect on filing, except as permitted  
 13 by Section 4.052 or as provided by the provisions of this code that  
 14 apply to the entity making the filing or other law. (TBCA 2.10.C,  
 15 2.10-1.C, 2.12.C(4), 2.13.F, 2.22.F, 3.03.C (part), 3.04.A, B,  
 16 4.06.A, 4.07.F, 4.10.D, 4.11.D, 4.12.D, 4.14.C(7), 5.03.L (part),  
 17 5.05, 5.16.D, 5.19, 6.01.A(3) (part), 6.05.D (part), 6.07.B (part),  
 18 7.01.D (part), E (part), 8.07, 8.09.C, D(2) (part), 8.13.D, 8.15.B  
 19 (part), 8.16.E (part), 9.14.C(4), 12.22.D, 12.34.D; TLLCA 2.06.C,  
 20 D(2) (part), 2.07.C, 3.03.C (part), 3.04.A, B, 3.08.A, 3.09.F,  
 21 6.08.B (part), 7.07, 7.08.D, 7.10.B, 7.11.D (part), E (part),  
 22 9.03.F, 10.03.C, 10.05.C, 10.10; TNPCA 2.06.A, C, D(2) (part),  
 23 3.04, 4.05.A, 4.06.F, 5.05, 6.06.B (part), 7.01.E (part), 8.06,  
 24 8.08.C, D(2) (part), 8.12.D, 8.14.B (part), 8.15.E (part); TPAA 13,  
 25 17(A), 20; TRLPA 1.05(c), 1.06(d), (e), (g) (part), (i) (part),  
 26 2.01(b), 2.02(e), 2.03(c), 2.06(d), 2.07(b), 2.10(d), 2.11(f),  
 27 2.15(f), 9.09, 13.02(c) (part), 13.07(b), 13.08(b) (part); TRPA

1 3.08(b)(4), (6) (part), (7) (part), 9.01(f), 9.02(f), 9.05(g),  
2 10.02(d), (f) (part), (g) (part), 10.05(d), (e), (f), (i) (part);  
3 TREITA 3.10(B) (part), 5.10(E), 7.40(F)(4), 19.20(C), 22.60(A),  
4 22.70(E), 23.50, 26.10(D)(6).)

5 Sec. 4.052. DELAYED EFFECTIVENESS OF CERTAIN FILINGS.

6 Except as provided by Section 4.058, a filing instrument may take  
7 effect after the time the instrument would otherwise take effect as  
8 provided by this code for the entity filing the instrument and:

- 9 (1) at a specified date and time; or  
10 (2) on the occurrence of a future event or fact,  
11 including an act of any person. (TBCA 10.03.A (part); TLLCA  
12 9.03.A(1), (2) (part); TNPCA 10.07.A, B (part); TRLPA 2.12.A  
13 (part); TREITA 27.10(A) (part), (F); TRPA 3.08(b)(4), 9.06,  
14 10.02(d).)

15 Sec. 4.053. CONDITIONS FOR DELAYED EFFECTIVENESS. (a) The  
16 date and time at which a filing instrument takes effect is delayed  
17 if the instrument clearly and expressly states, in addition to any  
18 other required statement or information:

19 (1) the specific date and time at which the instrument  
20 takes effect; or

21 (2) if the instrument takes effect on the occurrence  
22 of a future event or fact that may occur:

23 (A) the manner in which the event or fact will  
24 cause the instrument to take effect; and

25 (B) the date of the 90th day after the date the  
26 instrument is signed.

27 (b) If a filing instrument is to take effect on a specific

1 date and time other than that provided by this code:

2 (1) the date may not be later than the 90th day after  
3 the date the instrument is signed; and

4 (2) the specific time at which the instrument is to  
5 take effect may not be specified as "12:00 a.m." or "12:00 p.m."  
6 (TBCA 10.03.A (part); TLLCA 9.03.A(2), (3); TNPCA 10.07.B (part);  
7 TRLPA 2.12.A (part); TREITA 27.10(A) (part).)

8 Sec. 4.054. DELAYED EFFECTIVENESS ON FUTURE EVENT OR FACT.  
9 A filing instrument that is to take effect on the occurrence of a  
10 future event or fact, other than the passage of time, and for which  
11 the statement required by Section 4.055 is filed within the  
12 prescribed time, takes effect on the date and time at which the last  
13 specified event or fact occurs or the date and time at which a  
14 condition is satisfied or waived. (TBCA 10.03.D (part); TLLCA  
15 9.03.D(1) (part); TNPCA 10.07.E (part); TRLPA 2.12.D (part); TREITA  
16 27.10(D) (part); TRPA 9.06.)

17 Sec. 4.055. STATEMENT OF EVENT OR FACT. An entity that files  
18 a filing instrument that takes effect on the occurrence of a future  
19 event or fact, other than the passage of time, must sign and file as  
20 provided by Subchapter A, not later than the 90th day after the date  
21 the filing instrument is filed, a statement that:

22 (1) confirms that each event or fact on which the  
23 effect of the instrument is conditioned has been satisfied or  
24 waived; and

25 (2) states the date and time on which the condition was  
26 satisfied or waived. (TBCA 10.03.A (part); TLLCA 9.03.A(4); TNPCA  
27 10.07.B (part); TRLPA 2.12.A (part); TREITA 27.10(A) (part); TRPA

1 9.06.)

2           Sec. 4.056. FAILURE TO FILE STATEMENT. (a) If the effect of  
3 a filing instrument is conditioned on the occurrence of a future  
4 event or fact, other than the passage of time, and the statement  
5 required by Section 4.055 is not filed before the expiration of the  
6 prescribed time, the filing instrument does not take effect. This  
7 section does not preclude the filing of a subsequent filing  
8 instrument required by this code to make the event or transaction  
9 evidenced by the original filing instrument effective.

10           (b) If the effect of a filing instrument is conditioned on  
11 the occurrence of a future event or fact, other than the passage of  
12 time, and the specified event or fact does not occur and is not  
13 waived, the parties to the filing instrument must sign and file a  
14 certificate of abandonment as provided by Section 4.057. (TBCA  
15 10.03.E; TLLCA 9.03.E; TNPCA 10.07.F; TRLPA 2.12.E; TREITA  
16 27.10(E).)

17           Sec. 4.057. ABANDONMENT BEFORE EFFECTIVENESS. (a) The  
18 parties to a filing instrument may abandon the filing instrument if  
19 the instrument has not taken effect.

20           (b) To abandon a filing instrument the parties to the  
21 instrument must file with the filing officer a certificate of  
22 abandonment.

23           (c) A certificate of abandonment must:

24                   (1) be signed on behalf of each entity that is a party  
25 to the action or transaction by the person authorized by this code  
26 to act on behalf of the entity;

27                   (2) state the nature of the filing instrument to be

1 abandoned, the date of the instrument, and the parties to the  
2 instrument; and

3 (3) state that the filing instrument has been  
4 abandoned in accordance with the agreement of the parties.

5 (d) On the filing of the certificate of abandonment, the  
6 action or transaction evidenced by the original filing instrument  
7 is abandoned and may not take effect.

8 (e) If in the interim before a certificate of abandonment is  
9 filed the name of an entity that is a party to the action or  
10 transaction becomes the same as or deceptively similar to the name  
11 of another entity already on file or reserved or registered under  
12 this code, the filing officer may not file the certificate of  
13 abandonment unless the entity by or for whom the certificate is  
14 filed changes its name in the manner provided by this code for that  
15 entity. (TLLCA 9.03.F; TRLPA 2.12.F; 1 T.A.C. 79.82.)

16 Sec. 4.058. DELAYED EFFECTIVENESS NOT PERMITTED. The effect  
17 of the following filing instruments may not be delayed:

18 (1) a reservation of name as provided by Subchapter C,  
19 Chapter 5;

20 (2) a registration of name as provided by Subchapter  
21 D, Chapter 5;

22 (3) a statement of event or fact as provided by Section  
23 4.055; or

24 (4) a certificate of abandonment as provided by  
25 Section 4.057. (TBCA 10.03.A (part); TLLCA 9.03.A(1); TNPCA  
26 10.07.A.)

27 Sec. 4.059. ACKNOWLEDGMENT OF FILING WITH DELAYED

1 EFFECTIVENESS. (a) An acknowledgment of filing issued or other  
2 action taken by the secretary of state affirming the filing of a  
3 filing instrument that has a specific delayed effective date must  
4 state the date and time at which the instrument takes effect.

5 (b) An acknowledgment of filing issued or other action taken  
6 by the secretary of state affirming the filing of a filing  
7 instrument the effect of which is delayed until the occurrence of a  
8 future event or fact must:

9 (1) state that the effective date and time of the  
10 filing instrument is conditioned on the occurrence of a future  
11 event or fact as described in the filing instrument; or

12 (2) otherwise indicate that the effective date and  
13 time of the instrument is conditioned on the occurrence of a future  
14 event or fact. (TBCA 10.03.C, D (part); TLLCA 9.03.C, D(1) (part),  
15 (2); TNPCA 10.07.D, E (part); TRLPA 2.12.C, D (part).)

16 [Sections 4.060-4.100 reserved for expansion]

17 SUBCHAPTER C. CORRECTION AND AMENDMENT

18 Sec. 4.101. CORRECTION OF FILINGS. (a) A filing instrument  
19 that has been filed with the secretary of state that is an  
20 inaccurate record of the event or transaction evidenced in the  
21 instrument, that contains an inaccurate or erroneous statement, or  
22 that was defectively or erroneously signed, sealed, acknowledged,  
23 or verified may be corrected by filing a certificate of correction.

24 (b) A certificate of correction must be signed by the person  
25 authorized by this code to act on behalf of the entity. (TLLCA  
26 8.12.B; TMCLA 7.01; TRLPA 2.13(a), 9.05.)

27 Sec. 4.102. LIMITATION ON CORRECTION OF FILINGS. A filing



1 instrument may be corrected to contain only those statements that  
2 this code authorizes or requires to be included in the original  
3 instrument. A certificate of correction may not alter, add, or  
4 delete a statement that by its alteration, addition, or deletion  
5 would have caused the secretary of state to determine the filing  
6 instrument did not conform to this code at the time of filing. (1  
7 T.A.C. 79.24(a).)

8           Sec. 4.103. CERTIFICATE OF CORRECTION. The certificate of  
9 correction must:

- 10           (1) state the name of the entity;
- 11           (2) identify the filing instrument to be corrected by  
12 description and date of filing with the secretary of state;
- 13           (3) identify the inaccuracy, error, or defect to be  
14 corrected; and
- 15           (4) state in corrected form the portion of the filing  
16 instrument to be corrected. (TLLCA 8.12.B; TMCLA 7.02; TRLPA  
17 2.13(b).)

18           Sec. 4.104. FILING CERTIFICATE OF CORRECTION. The  
19 certificate of correction shall be filed with and acted on by the  
20 secretary of state as provided by Subchapter A. On filing, the  
21 secretary of state shall deliver to the entity or its  
22 representative an acknowledgment of the filing. (TLLCA 8.12.B;  
23 TMCLA 7.03.)

24           Sec. 4.105. EFFECT OF CERTIFICATE OF CORRECTION. (a) After  
25 the secretary of state files the certificate of correction, the  
26 filing instrument is considered to have been corrected on the date  
27 the filing instrument was originally filed, except as provided by

1 Subsection (b).

2 (b) As to a person who is adversely affected by the  
3 correction, the filing instrument is considered to have been  
4 corrected on the date the certificate of correction is filed.

5 (c) An acknowledgment of filing or a similar instrument  
6 issued by the secretary of state before a filing instrument is  
7 corrected, with respect to the effect of filing the original filing  
8 instrument, applies to the corrected filing instrument as of the  
9 date the corrected filing instrument is considered to have been  
10 filed under this section. (TLLCA 8.12.B; TMCLA 7.04; TRLPA  
11 2.13(c).)

12 Sec. 4.106. AMENDMENT OF FILINGS. A filing instrument that  
13 an entity files with the secretary of state may be amended or  
14 supplemented to the extent permitted by the provisions of this code  
15 that apply to that entity. (TBCA 4.01.A, 4.07.A (part), 4.14.A  
16 (part), 8.13.A, B, D, 12.13.A (part), 12.21.A (part), 13.04.A  
17 (part); TNPCA 4.01, 4.06.A (part), 8.12.A, B, D; TPAA 14; TLLCA  
18 3.05.A, 3.09.A (part), 7.08.A, B, D; TRLPA 2.02(a) (part), (b),  
19 (c), (d), 2.06(a) (part), 2.10(a), 9.05; TRPA 3.08(b)(11) (part);  
20 TREITA 22.10(A), 22.70(A) (part), 26.10(A) (part).)

21 [Sections 4.107-4.150 reserved for expansion]

22 SUBCHAPTER D. FILING FEES

23 Sec. 4.151. FILING FEES: ALL ENTITIES. The secretary of  
24 state shall impose the following fees:

25 (1) for filing a certificate of correction, \$15;

26 (2) for filing an application for reservation or  
27 registration of a name, \$40;

1 (3) for filing a notice of transfer of a name  
2 reservation or registration, \$15;

3 (4) for filing an application for renewal of  
4 registration of a name, \$40;

5 (5) for filing a certificate of merger or conversion,  
6 other than a filing on behalf of a nonprofit corporation, \$300 plus,  
7 with respect to a merger, any fee imposed for filing a certificate  
8 of formation for each newly created filing entity or, with respect  
9 to a conversion, the fee imposed for filing a certificate of  
10 formation for the converted entity;

11 (6) for filing a certificate of exchange, \$300; and

12 (7) for preclearance of a filing instrument, \$50.  
13 (TBCA 10.01.A (part); TLLCA 8.12.B, 9.01.A (part); TMCLA 7.05;  
14 TNPCA 9.03.A (part); TRLPA 12.01 (part).)

15 Sec. 4.152. FILING FEES: FOR-PROFIT CORPORATIONS. For a  
16 filing by or for a for-profit corporation, the secretary of state  
17 shall impose the following fees:

18 (1) for filing a certificate of formation, \$300;

19 (2) for filing a certificate of amendment, \$150;

20 (3) for filing an application of a foreign corporation  
21 for registration to transact business in this state, \$750;

22 (4) for filing an application of a foreign corporation  
23 for an amended registration to transact business in this state,  
24 \$150;

25 (5) for filing a restated certificate of formation and  
26 accompanying statement, \$300;

27 (6) for filing a statement of change of registered

1 office, registered agent, or both, \$15;

2 (7) for filing a statement of change of name or address  
3 of a registered agent, \$15, except that the maximum fee for  
4 simultaneous filings by a registered agent for more than one  
5 corporation may not exceed \$750;

6 (8) for filing a statement of resolution establishing  
7 one or more series of shares, \$15;

8 (9) for filing a certificate of winding up and  
9 termination, \$40;

10 (10) for filing a certificate of withdrawal of a  
11 foreign corporation, \$15;

12 (11) for filing a certificate from the home state of a  
13 foreign corporation that the corporation no longer exists in that  
14 state, \$15;

15 (12) for filing a bylaw or agreement restricting  
16 transfer of shares or securities other than as an amendment to the  
17 certificate of formation, \$15;

18 (13) for filing an application for reinstatement of a  
19 certificate of formation or registration as a foreign corporation  
20 following forfeiture under the Tax Code, \$75;

21 (14) for filing an application for reinstatement of a  
22 corporation or registration as a foreign corporation after  
23 involuntary dissolution or revocation, \$75; and

24 (15) for filing any instrument as provided by this  
25 code for which this section does not expressly provide a fee, \$15.

26 (TBCA 10.01.A.)

27 Sec. 4.153. FILING FEES: NONPROFIT CORPORATIONS. For a

1 filing by or for a nonprofit corporation, the secretary of state  
2 shall impose the following fees:

3 (1) for filing a certificate of formation, \$25;

4 (2) for filing a certificate of amendment, \$25;

5 (3) for filing a certificate of merger, conversion, or  
6 consolidation, without regard to whether the surviving or new  
7 corporation is a domestic or foreign corporation, \$50;

8 (4) for filing a statement of change of a registered  
9 office, registered agent, or both, \$5;

10 (5) for filing a certificate of dissolution, \$5;

11 (6) for filing an application of a foreign corporation  
12 for registration to conduct affairs in this state, \$25;

13 (7) for filing an application of a foreign corporation  
14 for an amended registration to conduct affairs in this state, \$25;

15 (8) for filing a certificate of withdrawal of a  
16 foreign corporation, \$5;

17 (9) for filing a restated certificate of formation and  
18 accompanying statement, \$50;

19 (10) for filing a statement of change of name or  
20 address of a registered agent, \$15, except that the maximum fee for  
21 simultaneous filings by a registered agent for more than one  
22 corporation may not exceed \$250;

23 (11) for filing a report under Chapter 22, \$5;

24 (12) for filing a report under Chapter 22 to reinstate  
25 a corporation's right to conduct affairs in this state, \$5, plus a  
26 late fee in the amount of \$5 or in the amount of \$1 for each month or  
27 part of a month that the report remains unfiled, whichever amount is

1 greater, except that the late fee may not exceed \$25;

2 (13) for filing a report under Chapter 22 to reinstate  
3 a corporation or registration following involuntary termination or  
4 revocation, \$25; and

5 (14) for filing any instrument of a domestic or  
6 foreign corporation as provided by this code for which this section  
7 does not expressly provide a fee, \$5. (TNPCA 8.15.E (part), 9.02.C,  
8 F, 9.03.)

9 Sec. 4.154. FILING FEES: LIMITED LIABILITY COMPANIES. For  
10 a filing by or for a limited liability company, the secretary of  
11 state shall impose the same fee as the filing fee for a similar  
12 instrument under Section 4.152. (TLLCA 7.11.E (part), 9.01.A.)

13 Sec. 4.155. FILING FEES: LIMITED PARTNERSHIPS. For a  
14 filing by or for a limited partnership, the secretary of state shall  
15 impose the following fees:

16 (1) for filing a certificate of formation or an  
17 application for registration as a foreign limited partnership,  
18 \$750;

19 (2) for filing a certificate of amendment or an  
20 amendment of registration of a foreign limited partnership, \$150;

21 (3) for filing a restated certificate of formation,  
22 \$300;

23 (4) for filing a statement for change of registered  
24 office, registered agent, or both, \$15;

25 (5) for filing a statement of change of name or address  
26 of a registered agent, \$15, except that the maximum fee for  
27 simultaneous filings by a registered agent for more than one

1 limited partnership may not exceed \$750;

2 (6) for filing a certificate of winding up and  
3 termination, \$40;

4 (7) for filing a certificate of withdrawal of a  
5 foreign limited partnership, \$15;

6 (8) for filing a certificate of reinstatement of a  
7 limited partnership or registration as a foreign limited  
8 partnership after involuntary termination or revocation under  
9 Chapter 11 or Chapter 9, \$75;

10 (9) for filing a periodic report required under  
11 Chapter 153, \$50;

12 (10) for reviving a limited partnership's right to  
13 transact business under Chapter 153, \$50 plus a late fee in an  
14 amount equal to the lesser of:

15 (A) \$25 for each month or part of a month that  
16 elapses after the date of the notice of forfeiture; or

17 (B) \$100;

18 (11) for reinstatement of a certificate of formation  
19 or registration under Chapter 153, \$50 plus a late fee of \$100 and a  
20 reinstatement fee of \$75;

21 (12) for filing any document required or permitted to  
22 be filed for a limited liability partnership, the secretary of  
23 state shall impose the same fee as the filing fee for a general  
24 partnership under Section 4.158. For purposes of calculation of  
25 the filing fee, all references to partners in Section 4.158 as  
26 applied to limited partnerships mean general partners only; and

27 (13) for filing any instrument as provided by this

1 code for which this section does not expressly provide a fee, \$15.  
2 (TRLPA 12.01, 13.05(b) (part), 13.07(a) (part), 13.09(a).)

3 Sec. 4.156. FILING FEES: PROFESSIONAL ASSOCIATIONS. For a  
4 filing by or for a professional association, the secretary of state  
5 shall impose the following fees:

6 (1) for filing a certificate of formation or an  
7 application for registration as a foreign professional  
8 association, \$750;

9 (2) for filing an annual statement, \$35; and

10 (3) for filing any other instrument, the fee provided  
11 for the filing of a similar instrument under Section 4.152. (TPAA  
12 22.)

13 Sec. 4.157. FILING FEES: PROFESSIONAL CORPORATIONS. For a  
14 filing by or for a professional corporation, the secretary of state  
15 shall impose the same fee as the filing fee for a similar instrument  
16 under Section 4.152. (TPCA 5 (part).)

17 Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a  
18 filing by or for a general partnership, the secretary of state shall  
19 impose the following fees:

20 (1) for filing a limited liability partnership  
21 application, \$200 for each partner;

22 (2) for filing a limited liability partnership renewal  
23 application, \$200 for each partner on the date of renewal;

24 (3) for filing a statement of foreign qualification by  
25 a foreign limited liability partnership, \$200 for each partner in  
26 this state, except that the maximum fee may not exceed \$750;

27 (4) for filing a renewal of registration by a foreign



1 limited liability partnership, \$200 for each partner in this state,  
2 except that the maximum fee may not exceed \$750;

3 (5) for filing a certificate of amendment for a  
4 domestic limited liability partnership, \$10, plus \$200 for each  
5 partner added by the amendment;

6 (6) for filing a certificate of amendment for a  
7 foreign limited liability partnership, \$10, plus \$200 for each  
8 partner in this state added by amendment not to exceed \$750; and

9 (7) for filing any other filing instrument, the filing  
10 fee imposed for a similar instrument under Section 4.155. (TRPA  
11 3.08(b)(3), (7) (part), (11) (part), 10.02(c), (g) (part), (k)  
12 (part).)

13 Sec. 4.159. FILING FEES: NONPROFIT ASSOCIATIONS. For a  
14 filing by or for a nonprofit association, the secretary of state  
15 shall impose the following fees:

16 (1) for filing a statement appointing an agent to  
17 receive service of process, \$25;

18 (2) for filing an amendment of a statement appointing  
19 an agent, \$5; and

20 (3) for filing a cancellation of a statement  
21 appointing an agent, \$5. (TUUNAA 12(d), 1 T.A.C. 80.21(c),  
22 80.22(c), 80.23(c), 80.24(c).)

23 Sec. 4.160. FILING FEES: FOREIGN FILING ENTITIES. For a  
24 filing by or for a foreign filing entity when no other fee has been  
25 provided, the secretary of state shall impose the same fee as the  
26 filing fee for a similar instrument under Section 4.151 or 4.152.  
27 (New.)



1 entity having authority to transact business in this state may  
2 transact business under an assumed name by filing an assumed name  
3 certificate in accordance with Chapter 36, Business & Commerce  
4 Code. The requirements of this subchapter do not apply to an  
5 assumed name set forth in an assumed name certificate filed under  
6 that chapter. (TBCA 2.05.B, 8.03.A(2) (part); TNPCA 8.04.A (part);  
7 TLLCA 2.03.B; TRLPA 9.03(b).)

8       Sec. 5.052. UNAUTHORIZED PURPOSE IN NAME PROHIBITED. A  
9 filing entity or a foreign filing entity may not have a name that  
10 contains any word or phrase that indicates or implies that the  
11 entity is engaged in a business that the entity is not authorized by  
12 law to pursue. (TBCA 2.05.A(2); TLLCA 2.03.A(2), 7.03 (part);  
13 TNPCA 2.04 (part); TRLPA 1.03 (part).)

14       Sec. 5.053. IDENTICAL AND DECEPTIVELY SIMILAR NAMES  
15 PROHIBITED. (a) A filing entity may not have a name, and a foreign  
16 filing entity may not register to transact business in this state  
17 under a name, that is the same as, or that the secretary of state  
18 determines to be deceptively similar or similar to:

- 19           (1) the name of another existing filing entity;  
20           (2) the name of a foreign filing entity that is  
21 registered under Chapter 9;  
22           (3) a name that is reserved under Subchapter C; or  
23           (4) a name that is registered under Subchapter D.

24       (b) Subsection (a) does not apply if the other entity or the  
25 person for whom the name is reserved or registered, as appropriate,  
26 consents in writing to the use of the similar name. (TBCA  
27 2.05.A(3), 8.03.A(2) (part); TLLCA 2.03.A(3), 7.03 (part); TNPCA

1 2.04 (part), 8.03.A(2) (part); TRLPA 1.03 (part).)

2 Sec. 5.054. NAME OF CORPORATION, FOREIGN CORPORATION, OR  
3 PROFESSIONAL CORPORATION. (a) The name of a corporation or foreign  
4 corporation must contain:

5 (1) the word "company," "corporation,"  
6 "incorporated," or "limited"; or

7 (2) an abbreviation of one of those words.

8 (b) Subsection (a) does not apply to a nonprofit corporation  
9 or foreign nonprofit corporation.

10 (c) Instead of a word or abbreviation required by Subsection  
11 (a), the name of a professional corporation may contain the phrase  
12 "professional corporation" or an abbreviation of the phrase. (TBCA  
13 2.05.A(1), 8.03.A(1); TPCA 8 (part).)

14 Sec. 5.055. NAME OF LIMITED PARTNERSHIP OR FOREIGN LIMITED  
15 PARTNERSHIP. (a) The name of a limited partnership or foreign  
16 limited partnership must contain:

17 (1) the word "limited";

18 (2) the phrase "limited partnership"; or

19 (3) an abbreviation of that word or phrase.

20 (b) The name of a limited partnership that is a limited  
21 liability limited partnership must also contain:

22 (1) the phrase "limited liability partnership" or  
23 "limited liability limited partnership"; or

24 (2) an abbreviation of one of those phrases. (TRLPA  
25 1.03 (part); TRPA 3.08(c).)

26 Sec. 5.056. NAME OF LIMITED LIABILITY COMPANY OR FOREIGN  
27 LIMITED LIABILITY COMPANY. (a) The name of a limited liability

1 company or a foreign limited liability company doing business in  
2 this state must contain:

3 (1) the phrase "limited liability company" or "limited  
4 company"; or

5 (2) an abbreviation of one of those phrases.

6 (b) A limited liability company formed before September 1,  
7 1993, the name of which complied with the laws of this state on the  
8 date of formation but does not comply with this section is not  
9 required to change its name. (TLLCA 2.03.A (part), 7.03 (part).)

10 Sec. 5.057. NAME OF COOPERATIVE ASSOCIATION. (a) The name  
11 of a cooperative association must contain:

12 (1) the word "cooperative"; or

13 (2) an abbreviation of that word.

14 (b) A domestic or foreign entity may use the word  
15 "cooperative" in its name to the extent permitted by Section  
16 251.452. (CAA 8(b) (part), 39(a).)

17 Sec. 5.058. NAME OF PROFESSIONAL ASSOCIATION. The name of a  
18 professional association must contain:

19 (1) the word "associated," "associates," or  
20 "association";

21 (2) the phrase "professional association"; or

22 (3) an abbreviation of one of those words or that  
23 phrase. (TPAA 4 (part).)

24 Sec. 5.059. NAME OF PROFESSIONAL LIMITED LIABILITY COMPANY.

25 (a) The name of a professional limited liability company must  
26 contain:

27 (1) the phrase "professional limited liability

1 company"; or

2 (2) an abbreviation of that phrase.

3 (b) A professional limited liability company formed before  
4 September 1, 1993, the name of which complied with the laws of this  
5 state on the date of formation but does not comply with this  
6 section, is not required to change its name. (TLLCA 11.02 (part).)

7 Sec. 5.060. NAME OF PROFESSIONAL ENTITY; CONFLICTS WITH  
8 OTHER LAW OR ETHICAL RULE. The name of a professional entity must  
9 not be contrary to a statute or regulation that governs a person who  
10 provides a professional service through the professional entity,  
11 including a rule of professional ethics. (TLLCA 11.02 (part); TPAA  
12 4 (part); TPCA 8 (part).)

13 Sec. 5.061. NAME CONTAINING "LOTTO" OR "LOTTERY"  
14 PROHIBITED. A filing entity or a foreign filing entity may not have  
15 a name that contains the word "lotto" or "lottery." (TBCA  
16 2.05.A(4); TNPCA 2.04.A(3).)

17 Sec. 5.062. VETERANS ORGANIZATIONS; UNAUTHORIZED USE OF  
18 NAME. (a) Subject to Subsection (b), a filing entity may not have a  
19 name that:

20 (1) reasonably implies that the entity is created by  
21 or for the benefit of war veterans or their families; and

22 (2) contains the word or phrase, or any variation or  
23 abbreviation of:

24 (A) "veteran";

25 (B) "legion";

26 (C) "foreign";

27 (D) "Spanish";

1 (E) "disabled";

2 (F) "war"; or

3 (G) "world war."

4 (b) The prohibition in Subsection (a) does not apply to a  
5 filing entity with a name approved in writing by:

6 (1) a congressionally recognized veterans  
7 organization with a name containing the same word or phrase, or  
8 variation or abbreviation, contained in the filing entity's name;  
9 or

10 (2) if a veterans organization described by  
11 Subdivision (1) does not exist, the state commander of the:

12 (A) American Legion;

13 (B) Disabled American Veterans of the World War;

14 (C) Veterans of Foreign Wars of the United  
15 States;

16 (D) United Spanish War Veterans; or

17 (E) Veterans of the Spanish-American War. (TMCLA  
18 3.01.)

19 Sec. 5.063. NAME OF LIMITED LIABILITY PARTNERSHIP. (a) The  
20 name of a domestic or foreign limited liability partnership must  
21 contain:

22 (1) the phrase "limited liability partnership"; or

23 (2) an abbreviation of the phrase.

24 (b) A domestic or foreign limited liability partnership is  
25 subject to Section 5.053.

26 (c) A domestic or foreign limited liability partnership  
27 that is also a limited partnership must comply with Section 5.055

1 and not this section. (TRPA 3.08(c).)

2 [Sections 5.064-5.100 reserved for expansion]

3 SUBCHAPTER C. RESERVATION OF NAMES

4 Sec. 5.101. APPLICATION FOR RESERVATION OF NAME. (a) Any  
5 person may file an application with the secretary of state to  
6 reserve the exclusive use of a name under this chapter.

7 (b) The application must be:

8 (1) accompanied by any required filing fee; and

9 (2) signed by the applicant or by the agent or attorney  
10 of the applicant. (TBCA 2.06.A, B (part); TLLCA 2.04.A, B (part);  
11 TNPCA 2.04A; TRLPA 1.04(a), (b) (part).)

12 Sec. 5.102. RESERVATION OF CERTAIN NAMES PROHIBITED;  
13 EXCEPTIONS. (a) The secretary of state may not reserve a name that  
14 is the same as, or that the secretary of state considers deceptively  
15 similar or similar to:

16 (1) the name of an existing filing entity;

17 (2) the name of a foreign filing entity that is  
18 registered under Chapter 9;

19 (3) a name that is reserved under this subchapter; or

20 (4) a name that is registered under Subchapter D.

21 (b) Subsection (a) does not apply if the other entity or the  
22 person for whom the name is reserved or registered, as appropriate,  
23 consents in writing to the subsequent reservation of the similar  
24 name. (TBCA 2.05.A(3), 2.06.B (part); TLLCA 2.03.A(3), 2.04.B  
25 (part); TNPCA 2.04.A(2); TRLPA 1.03 (part), 1.04(b) (part).)

26 Sec. 5.103. ACTION ON APPLICATION. If the secretary of  
27 state determines that the name specified in the application is



1 eligible for reservation, the secretary shall reserve that name for  
2 the exclusive use of the applicant. (TBCA 2.06.B (part); TLLCA  
3 2.04.B (part); TNPCA 2.04A.B; TRLPA 1.04(b) (part).)

4 Sec. 5.104. DURATION OF RESERVATION OF NAME. The secretary  
5 of state shall reserve the name for the applicant until the earlier  
6 of:

7 (1) the 121st day after the date the application is  
8 accepted for filing; or

9 (2) the date the applicant files with the secretary of  
10 state a written notice of withdrawal of the reservation. (TBCA  
11 2.06.B (part), D; TLLCA 2.04.B (part), D; TNPCA 2.04A.B; TRLPA  
12 1.04(b) (part).)

13 Sec. 5.105. RENEWAL OF RESERVATION. A person may renew the  
14 person's reservation of a name under this subchapter for successive  
15 120-day periods if, during the 30-day period preceding the  
16 expiration of that reservation, the person:

17 (1) files a new application to reserve the name; and

18 (2) pays the required filing fee. (TRLPA 1.04(b)  
19 (part).)

20 Sec. 5.106. TRANSFER OF RESERVATION OF NAME. (a) A person  
21 may transfer the person's reservation of a name by filing with the  
22 secretary of state a notice of transfer.

23 (b) The notice of transfer must:

24 (1) be signed by the person for whom the name is  
25 reserved; and

26 (2) state the name and address of the person to whom  
27 the reservation is to be transferred. (TBCA 2.06.C; TLLCA 2.04.C;

1 TNPCA 2.04A.B; TRLPA 1.04(b) (part).)

2 [Sections 5.107-5.150 reserved for expansion]

3 SUBCHAPTER D. REGISTRATION OF NAMES

4 Sec. 5.151. APPLICATION BY CERTAIN ENTITIES FOR  
5 REGISTRATION OF NAME. An organization that is authorized to do  
6 business in this state as a bank, trust company, savings  
7 association, or insurance company, or that is a foreign filing  
8 entity not registered to do business in this state under this code,  
9 may apply to register its name under this subchapter. (TBCA 2.07.A  
10 (part); TLLCA 8.12.A (part); TRLPA 1.05(a).)

11 Sec. 5.152. APPLICATION FOR REGISTRATION OF NAME. (a) To  
12 register a name under this subchapter, an organization must file an  
13 application with the secretary of state.

14 (b) The application must:

15 (1) state that the organization validly exists and is  
16 doing business;

17 (2) contain a brief statement of the nature of the  
18 organization's business;

19 (3) set out:

20 (A) the name of the organization;

21 (B) the name of the jurisdiction under whose laws  
22 the organization is formed; and

23 (C) the date the organization was formed; and

24 (4) be accompanied by any required filing fee. (TBCA  
25 2.07.B; TRLPA 1.05(b).)

26 Sec. 5.153. CERTAIN REGISTRATIONS PROHIBITED; EXCEPTIONS.

27 (a) The secretary of state may not register a name that is the same

1 as, or that the secretary of state determines to be deceptively  
2 similar or similar to:

3 (1) the name of an existing filing entity;

4 (2) the name of a foreign filing entity that is  
5 registered under Chapter 9;

6 (3) a name that is reserved under Subchapter C; or

7 (4) a name that is registered under this subchapter.

8 (b) Subsection (a) does not apply if:

9 (1) the other entity or the person for whom the name is  
10 reserved or registered, as appropriate, consents in writing to the  
11 registration of the similar name; or

12 (2) the applicant is a bank, trust company, savings  
13 association, or insurance company that has been in continuous  
14 existence from a date that precedes the date the conflicting name is  
15 filed with the secretary of state. (TBCA 2.07.A (part); TLLCA  
16 8.12.A (part).)

17 Sec. 5.154. DURATION OF REGISTRATION OF NAME. The  
18 registration of a name under this subchapter is effective until the  
19 earlier of:

20 (1) the first anniversary of the date the application  
21 is accepted for filing; or

22 (2) the date the entity files with the secretary of  
23 state a written notice of withdrawal of the registration. (TBCA  
24 2.07.C; TLLCA 8.12.A (part); TRLPA 1.05(c).)

25 Sec. 5.155. RENEWAL OF REGISTRATION. A person may renew the  
26 person's registration of a name under this subchapter for  
27 successive one-year periods if, during the 90-day period preceding

1 the expiration of that registration, the person:

2 (1) files an application to renew the registration of  
3 the name; and

4 (2) pays the required filing fee. (TBCA 2.08; TRLPA  
5 1.05(d).)

6 [Sections 5.156-5.200 reserved for expansion]

7 SUBCHAPTER E. REGISTERED AGENTS AND REGISTERED OFFICES

8 Sec. 5.201. DESIGNATION AND MAINTENANCE OF REGISTERED AGENT  
9 AND REGISTERED OFFICE. (a) Each filing entity and each foreign  
10 filing entity shall designate and continuously maintain in this  
11 state:

12 (1) a registered agent; and

13 (2) a registered office.

14 (b) The registered agent:

15 (1) is an agent of the entity on whom may be served any  
16 process, notice, or demand required or permitted by law to be served  
17 on the entity;

18 (2) may be:

19 (A) an individual who is a resident of this  
20 state; or

21 (B) a domestic entity or a foreign entity that is  
22 registered to do business in this state; and

23 (3) must maintain a business office at the same  
24 address as the entity's registered office.

25 (c) The registered office:

26 (1) must be located at a street address where process  
27 may be personally served on the entity's registered agent;

1           (2) is not required to be a place of business of the  
2 filing entity or foreign filing entity; and

3           (3) may not be solely a mailbox service or a telephone  
4 answering service. (TBCA 2.09, 2.11.A (part), 8.08, 8.10.A (part);  
5 TLLCA 2.05, 2.08.A (part); TNPCA 2.05, 2.07.A (part), 8.07, 8.09.A  
6 (part); TREITA 5.10(A), 5.20(A) (part); TRLPA 1.06(a), 1.08(a)  
7 (part), 9.04; TRPA 10.05(a), (j) (part).)

8           Sec. 5.202. CHANGE BY ENTITY TO REGISTERED OFFICE OR  
9 REGISTERED AGENT. (a) A filing entity or foreign filing entity may  
10 change its registered office, its registered agent, or both by  
11 filing a statement of the change in accordance with Chapter 4.

12           (b) The statement must contain:

13                 (1) the name of the entity;

14                 (2) the name of the entity's registered agent;

15                 (3) the street address of the entity's registered  
16 agent;

17                 (4) if the change relates to the registered agent, the  
18 name of the entity's new registered agent;

19                 (5) if the change relates to the registered office,  
20 the street address of the entity's new registered office;

21                 (6) a recitation that the change specified in the  
22 statement is authorized by the entity; and

23                 (7) a recitation that the street address of the  
24 registered office and the street address of the registered agent's  
25 business are the same.

26           (c) On acceptance of the statement by the filing officer,  
27 the statement is effective as an amendment to the appropriate

1 provision of:

2 (1) the filing entity's certificate of formation; or

3 (2) the foreign filing entity's registration. (TBCA  
4 2.10.A, C, 8.09.A, C; TLLCA 2.06.A, C; TNPCA 2.06.A, C; TREITA  
5 5.10(B); TRLPA 1.06(b), (d), (e); TRPA 10.05(b).)

6 Sec. 5.203. CHANGE BY REGISTERED AGENT TO NAME OR ADDRESS OF  
7 REGISTERED OFFICE. (a) The registered agent of a filing entity or a  
8 foreign filing entity may change its name, its address as the  
9 address of the entity's registered office, or both by filing a  
10 statement of the change in accordance with Chapter 4.

11 (b) The statement must be signed by the registered agent, or  
12 a person authorized to sign the statement on behalf of the  
13 registered agent, and must contain:

14 (1) the name of the entity represented by the  
15 registered agent;

16 (2) the name of the entity's registered agent and the  
17 address at which the registered agent maintained the entity's  
18 registered office;

19 (3) if the change relates to the name of the registered  
20 agent, the new name of that agent;

21 (4) if the change relates to the address of the  
22 registered office, the new address of that office; and

23 (5) a recitation that written notice of the change was  
24 given to the entity at least 10 days before the date the statement  
25 is filed.

26 (c) On acceptance of the statement by the filing officer,  
27 the statement is effective as an amendment to the appropriate

1 provision of:

2 (1) the filing entity's certificate of formation; or

3 (2) the foreign filing entity's registration.

4 (d) A registered agent may file a statement under this  
5 section that applies to more than one entity. (TBCA 2.10-1.A, C;  
6 TLLCA 2.07.A, C; TNPCA 2.06A.A, C; TREITA 5.10(F); TRLPA 1.06(h),  
7 (i) (part); TRPA 10.05(h), (i) (part).)

8 Sec. 5.204. RESIGNATION OF REGISTERED AGENT. (a) A  
9 registered agent of a filing entity or a foreign filing entity may  
10 resign as the registered agent by giving notice to that entity and  
11 to the appropriate filing officer.

12 (b) Notice to the entity must be given to the entity at the  
13 address of the entity most recently known by the agent.

14 (c) Notice to the filing officer must be given before the  
15 11th day after the date notice under Subsection (b) is mailed or  
16 delivered and must include:

17 (1) the address of the entity most recently known by  
18 the agent;

19 (2) a statement that written notice of the resignation  
20 has been given to the entity; and

21 (3) the date on which that written notice of  
22 resignation was given.

23 (d) On compliance with Subsections (b) and (c), the  
24 appointment of the registered agent terminates. The termination is  
25 effective on the 31st day after the date the secretary of state  
26 receives the notice.

27 (e) If the filing officer finds that a notice of resignation

1 received by the filing officer conforms to Subsections (b) and (c),  
2 the filing officer shall:

3 (1) notify the entity of the registered agent's  
4 resignation; and

5 (2) file the resignation in accordance with Chapter 4,  
6 except that a fee is not required to file the resignation. (TBCA  
7 2.10.D, 8.09.D; TLLCA 2.06.D; TNPCA 2.06.D, 8.08.D; TREITA 5.10(C),  
8 (D), (E); TRLPA 1.06(f), (g); TRPA 10.05(f), (g).)

9 [Sections 5.205-5.250 reserved for expansion]

10 SUBCHAPTER F. SERVICE OF PROCESS

11 Sec. 5.251. FAILURE TO DESIGNATE REGISTERED AGENT. The  
12 secretary of state is an agent of an entity for purposes of service  
13 of process, notice, or demand on the entity if:

14 (1) the entity is a filing entity or a foreign filing  
15 entity and:

16 (A) the entity fails to appoint or does not  
17 maintain a registered agent in this state; or

18 (B) the registered agent of the entity cannot  
19 with reasonable diligence be found at the registered office of the  
20 entity; or

21 (2) the entity is a foreign filing entity and:

22 (A) the entity's registration to do business  
23 under this code is revoked; or

24 (B) the entity transacts business in this state  
25 without being registered as required by Chapter 9. (TBCA 2.11.B  
26 (part), 8.10.B (part); TLLCA 2.08.B (part); TNPCA 2.07.B (part),  
27 8.09.B (part); TREITA 5.20(B) (part); TRLPA 1.08(b) (part), 9.10(b)



1 (part); TRPA 10.05(k).)

2 Sec. 5.252. SERVICE ON SECRETARY OF STATE. (a) Service on  
3 the secretary of state under Section 5.251 is effected by:

4 (1) delivering to the secretary duplicate copies of  
5 the process, notice, or demand; and

6 (2) accompanying the copies with any fee required by  
7 law, including this code or the Government Code, for:

8 (A) maintenance by the secretary of a record of  
9 the service; and

10 (B) forwarding by the secretary of the process,  
11 notice, or demand.

12 (b) Notice on the secretary of state under Subsection (a) is  
13 returnable in not less than 30 days. (TBCA 2.11.B (part), 8.10.B  
14 (part); TLLCA 2.08.B (part); TNPCA 2.07.B (part), 8.09.B (part);  
15 TREITA 5.20(B) (part), (D); TRLPA 1.08(b) (part), 9.10(b) (part);  
16 TRPA 10.05(1) (part).)

17 Sec. 5.253. ACTION BY SECRETARY OF STATE. (a) After service  
18 in compliance with Section 5.252, the secretary of state shall  
19 immediately send one of the copies of the process, notice, or demand  
20 to the named entity.

21 (b) The notice must be:

22 (1) addressed to the most recent address of the entity  
23 on file with the secretary of state; and

24 (2) sent by certified mail, with return receipt  
25 requested. (TBCA 2.11.B (part), 8.10.B (part); TLLCA 2.08.B  
26 (part); TNPCA 2.07.B (part), 8.09.B (part); TREITA 5.20(B) (part);  
27 TRLPA 1.08(b) (part), 9.10(b) (part); TRPA 10.05(1) (part).)

1           Sec. 5.254. REQUIRED RECORDS OF SECRETARY OF STATE. The  
2 secretary of state shall keep a record of each process, notice, or  
3 demand served on the secretary under this subchapter and shall  
4 record:

5                   (1) the time when each service on the secretary was  
6 made; and

7                   (2) each subsequent action of the secretary taken in  
8 relation to that service. (TBCA 2.11.C, 8.10.C; TLLCA 2.08.C;  
9 TNPCA 2.07.C, 8.09.C; TREITA 5.20(C); TRLPA 1.08(c), 9.10(c); TRPA  
10 10.05(m).)

11           Sec. 5.255. AGENT FOR SERVICE OF PROCESS, NOTICE, OR DEMAND  
12 AS MATTER OF LAW. For the purpose of service of process, notice, or  
13 demand:

14                   (1) the president and each vice president of a  
15 domestic or foreign corporation is an agent of that corporation;

16                   (2) each general partner of a domestic or foreign  
17 limited partnership and each partner of a domestic or foreign  
18 general partnership is an agent of that partnership;

19                   (3) each manager of a manager-managed domestic or  
20 foreign limited liability company and each member of a  
21 member-managed domestic or foreign limited liability company is an  
22 agent of that limited liability company;

23                   (4) each person who is a governing person of a domestic  
24 or foreign entity, other than an entity listed in Subdivisions  
25 (1)-(3), is an agent of that entity; and

26                   (5) each member of a committee of a nonprofit  
27 corporation authorized to perform the chief executive function of

1 the corporation is an agent of that corporation. (TBCA 2.11.A  
2 (part), 8.10.A (part); TLLCA 2.08.A (part); TNPCA 2.07.A (part),  
3 8.09.A (part); TREITA 5.20(A) (part); TRLPA 1.08(a) (part), 9.10(a)  
4 (part); TRPA 10.05(j) (part).)

5 Sec. 5.256. OTHER MEANS OF SERVICE NOT PRECLUDED. This  
6 chapter does not preclude other means of service of process,  
7 notice, or demand on a domestic or foreign entity as provided by  
8 other law. (TBCA 8.10.D; TLLCA 2.08.D; TRLPA 9.10(d); TRPA  
9 10.05(n).)

10 Sec. 5.257. SERVICE OF PROCESS BY POLITICAL SUBDIVISION.

11 (a) A process, notice, or demand required or permitted by law to be  
12 served by a political subdivision of this state or by a person,  
13 including another political subdivision or an attorney, acting on  
14 behalf of a political subdivision in connection with the collection  
15 of a delinquent ad valorem tax may be served on a domestic or  
16 foreign corporation whose corporate privileges are forfeited under  
17 Section 171.251, Tax Code, that is involuntarily terminated under  
18 Chapter 11, or whose registration is revoked under Chapter 9 by  
19 delivery of the process, notice, or demand to any officer or  
20 director of the corporation, as listed in the most recent records of  
21 the secretary of state.

22 (b) If the officers or directors of a corporation are  
23 unknown or cannot be found, service on the corporation may be made  
24 in the same manner as service is made on unknown shareholders under  
25 law.

26 (c) Notwithstanding any disability or reinstatement of a  
27 corporation, service of process under this section is sufficient

1 for a judgment against the corporation or a judgment in rem against  
2 any property to which the corporation holds title. (TBCA 2.11.D,  
3 8.10.E; TNPCA 2.07.D.)

4 CHAPTER 6. MEETINGS AND VOTING

5 SUBCHAPTER A. MEETINGS

6 Sec. 6.001. LOCATION OF MEETINGS. (a) Meetings of the  
7 owners or members of a domestic entity may be held at locations in  
8 or outside the state as:

9 (1) provided by or fixed in accordance with the  
10 governing documents of the domestic entity; or

11 (2) agreed to by all persons entitled to notice of the  
12 meeting.

13 (b) If the location of meetings of the owners or members of  
14 the entity is not established under Subsection (a), the owners or  
15 members may hold meetings only at the registered office of the  
16 entity in this state or the principal office of the entity.

17 (c) The governing persons of a domestic entity, or a  
18 committee of the governing persons, may hold meetings in or outside  
19 the state as:

20 (1) provided by or fixed in accordance with:

21 (A) the governing documents of the domestic  
22 entity; or

23 (B) the person calling the meeting; or

24 (2) agreed to by all persons entitled to notice of the  
25 meeting. (CAA 13(b), 21(d); TBCA 2.24.A, 2.37.A; TLLCA 2.19.A, B;  
26 TNPCA 2.10.A (part), 2.19.A; TREITA 10.10(A), 10.20(A).)

27 Sec. 6.002. ALTERNATIVE FORMS OF MEETINGS. (a) Subject to

1 this code and the governing documents of a domestic entity, the  
2 owners, members, or governing persons of the entity, or a committee  
3 of the owners, members, or governing persons, may hold meetings by  
4 using a conference telephone or similar communications equipment,  
5 or another suitable electronic communications system, including  
6 videoconferencing technology or the Internet, or any combination,  
7 if the telephone or other equipment or system permits each person  
8 participating in the meeting to communicate with all other persons  
9 participating in the meeting.

10 (b) If voting is to take place at the meeting, the entity  
11 must:

12 (1) implement reasonable measures to verify that every  
13 person voting at the meeting by means of remote communications is  
14 sufficiently identified; and

15 (2) keep a record of any vote or other action taken.  
16 (TBCA 9.10.C (part); TLLCA 2.23.C (part); TNPCA 9.11.A; TREITA  
17 10.30(C) (part).)

18 Sec. 6.003. PARTICIPATION CONSTITUTES PRESENCE. A person  
19 participating in a meeting is considered present at the meeting,  
20 unless the participation is for the express purpose of objecting to  
21 the transaction of business at the meeting on the ground that the  
22 meeting has not been lawfully called or convened. (TBCA 9.10.C  
23 (part); TLLCA 2.23.C (part); TREITA 10.30(C) (part).)

24 [Sections 6.004-6.050 reserved for expansion]

25 SUBCHAPTER B. NOTICE OF MEETINGS

26 Sec. 6.051. GENERAL NOTICE REQUIREMENTS. (a) Subject to  
27 this code and the governing documents of the entity, notice of a

1 meeting of the owners, members, or governing persons of a domestic  
2 entity, or a committee of the owners, members, or governing  
3 persons, must:

4 (1) be given in the manner determined by the governing  
5 authority of the entity; and

6 (2) state:

7 (A) the date and time of the meeting; and

8 (B) the location of the meeting or, if the  
9 meeting is held by using a conference telephone or other  
10 communications system authorized by Section 6.002, the form of  
11 communication used for the meeting.

12 (b) Subject to this code and the governing documents of a  
13 domestic entity, notice of a meeting that is:

14 (1) mailed is considered to be delivered on the date  
15 notice is deposited in the United States mail with postage paid in  
16 an envelope addressed to the person at the person's address as it  
17 appears on the ownership or membership records of the entity; and

18 (2) transmitted by facsimile or electronic message is  
19 considered to be delivered when the facsimile or electronic message  
20 is successfully transmitted. (CAA 14 (part); TBCA 2.25.A (part),  
21 2.37.B (part); TLLCA 2.19.B, E; TNPCA 2.11.A (part), 2.19.B  
22 (part).)

23 Sec. 6.052. WAIVER OF NOTICE. (a) Notice of a meeting is  
24 not required to be given to an owner, member, or governing person of  
25 a domestic entity, or a member of a committee of the owners,  
26 members, or governing persons, entitled to notice under this code  
27 or the governing documents of the entity if the person entitled to

1 notice signs a written waiver of notice of the meeting, regardless  
2 of whether the waiver is signed before or after the time of the  
3 meeting.

4 (b) If a person entitled to notice of a meeting participates  
5 in the meeting, the person's participation constitutes a waiver of  
6 notice of the meeting unless the person participates in the meeting  
7 solely to object to the transaction of business at the meeting on  
8 the ground that the meeting was not lawfully called or convened.  
9 (TBCA 2.37.B (part), 9.09; TLLCA 2.19.F, 8.08; TNPCA 2.19.B (part),  
10 9.09; TREITA 21.10.)

11 Sec. 6.053. EXCEPTION. (a) Notice of a meeting is not  
12 required to be given to an owner or member of a filing entity  
13 entitled to notice under this code or the governing documents of the  
14 entity if either of the following is mailed to the person entitled  
15 to notice of the meeting to the person's address as it appears on  
16 the ownership or membership transfer records of the entity and is  
17 returned undeliverable:

18 (1) notice of two consecutive annual meetings and  
19 notice of any meeting held during the period between the two annual  
20 meetings; or

21 (2) all, but in no event less than two, payments of  
22 distribution or interest on securities during a 12-month period if  
23 the payments are sent by first class mail.

24 (b) Notice of a meeting is not required to be given to an  
25 owner or member entitled to notice under this code or the governing  
26 documents of a filing entity the notice requirements of which are  
27 subject to the Securities Exchange Act of 1934, as amended (15

1 U.S.C. Section 78a et seq.), if the person entitled to notice of the  
2 meeting is considered a lost security holder under that Act and the  
3 regulations adopted under that Act.

4 (c) An action taken or a meeting held without giving notice  
5 to a person not entitled to notice under this section has the same  
6 force and effect as if notice had been given to the person.

7 (d) A certificate or other document filed with the secretary  
8 of state as a result of a meeting held or an action taken by a filing  
9 entity without giving notice of the meeting or action to a person  
10 not entitled to notice under this section may state that notice of  
11 the meeting or action was given to each person entitled to notice.

12 (e) Notice of a meeting must be given to a person not  
13 entitled to notice of the meeting under this section if the person  
14 delivers to the entity a written notice of the person's address.  
15 (TBCA 2.25.B; TREITA 11.10(B), (C).)

16 [Sections 6.054-6.100 reserved for expansion]

17 SUBCHAPTER C. RECORD DATES

18 Sec. 6.101. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN  
19 CONSENT TO ACTION. (a) Subject to this code, the governing  
20 documents of a domestic entity may provide the record date, or the  
21 manner of determining the record date, for:

22 (1) determining the owners or members of the entity  
23 entitled to:

24 (A) receive notice of a meeting of the owners or  
25 members;

26 (B) vote at a meeting of the owners or members or  
27 at any adjournment of a meeting; or



1 (C) receive a distribution from the entity other  
2 than a distribution involving a purchase or redemption by the  
3 entity of the entity's own securities; or

4 (2) any other proper purpose other than for  
5 determining the owners or members entitled to consent to action  
6 without a meeting of the owners or members.

7 (b) Subject to this code and the governing documents of a  
8 domestic entity, the governing authority of the entity, in advance,  
9 may provide a record date for determining the owners or members of  
10 the entity, except that the date may not be earlier than the 60th  
11 day before the date the action requiring the determination of  
12 owners or members is taken.

13 (c) Subject to this code and the governing documents of a  
14 domestic entity, the governing authority of the entity may provide  
15 for the closing of the ownership or membership transfer records of  
16 the entity for a period of not longer than 60 days to determine the  
17 owners or members of the entity for a purpose described by  
18 Subsection (a).

19 (d) If the owners or members of an entity are not otherwise  
20 determined under this section, the record date for determining the  
21 owners or members of an entity is the date on which:

22 (1) notice of the meeting is mailed to the owners or  
23 members entitled to notice of the meeting; or

24 (2) with respect to a distribution, other than a  
25 distribution involving a purchase or redemption by the domestic  
26 entity of any of its own securities, the governing authority adopts  
27 the resolution declaring the distribution.

1           (e) The record date for a meeting applies to any adjournment  
2 of the meeting unless:

3           (1) the owners or members entitled to vote are  
4 determined under Subsection (c); and

5           (2) the period during which the transfer records are  
6 closed expires. (TBCA 2.26.B (part); TNPCA 2.11A; TREITA 11.20(C)  
7 (part).)

8           Sec. 6.102. RECORD DATE FOR WRITTEN CONSENT TO ACTION. (a)  
9 Subject to this code and the governing documents of an entity, the  
10 governing authority of the entity may provide the record date for  
11 determining the owners or members of the entity entitled to written  
12 consent to action without a meeting of the owners or members unless  
13 a record date is provided under Section 6.101 for that action. The  
14 record date may not be earlier than the date the governing authority  
15 adopts the resolution providing for the record date.

16           (b) Subject to this code and the governing documents of an  
17 entity, the record date for determining the owners or members of the  
18 entity entitled to written consent to action without a meeting of  
19 the owners or members is the date a signed written consent to action  
20 stating the action taken or proposed to be taken is first delivered  
21 to the entity if:

22           (1) the governing authority of the entity does not  
23 provide a record date under Subsection (a); and

24           (2) prior action by the governing authority is not  
25 required under this code.

26           (c) Subject to this code or the governing documents of an  
27 entity, the record date for determining the owners or members of the

1 entity entitled to written consent to action without a meeting of  
2 the owners or members is at the close of business on the date the  
3 governing authority of the entity adopts a resolution taking prior  
4 action if:

5 (1) the governing authority does not provide a record  
6 date under Subsection (a); and

7 (2) prior action by the governing authority is  
8 required by this code. (TBCA 2.26.C (part); TREITA 11.20(D)  
9 (part).)

10 Sec. 6.103. RECORD DATE FOR SUSPENDED DISTRIBUTIONS. (a)

11 In this section, "distribution" includes a distribution that:

12 (1) was payable to an owner or member but not paid and  
13 was held in suspension by the entity making the distribution; or

14 (2) is paid or delivered by the entity making the  
15 distribution into an escrow account or to a trustee or custodian.

16 (b) A distribution made by a domestic entity shall be  
17 payable by the entity, or an escrow agent, trustee, or custodian of  
18 the distribution, to the owner or member determined on the record  
19 date for the distribution as provided by this subchapter.

20 (c) The right to a distribution under this section may be  
21 transferred by contract, by operation of law, or under the laws of  
22 descent and distribution. (TBCA 2.26.D; TREITA 11.20(E).)

23 [Sections 6.104-6.150 reserved for expansion]

24 SUBCHAPTER D. VOTING OF OWNERSHIP INTERESTS

25 Sec. 6.151. MANNER OF VOTING OF INTERESTS. Subject to the  
26 title governing the domestic entity, voting of interests of a  
27 domestic entity must be conducted in the manner provided by the

1 governing documents of the entity. (New.)

2           Sec. 6.152. VOTING OF INTERESTS OWNED BY ENTITY. (a) Except  
3 as provided by Subsection (b), an ownership interest owned by the  
4 entity that is the issuer of the interest, or by its direct or  
5 indirect subsidiary, may not be:

6                   (1) directly or indirectly voted at a meeting; or

7                   (2) included in determining at any time the total  
8 number of outstanding ownership interests of the entity.

9           (b) This section does not preclude a domestic or foreign  
10 entity from voting an ownership interest, including an interest in  
11 the entity, held or controlled by the entity in a fiduciary capacity  
12 or for which the entity otherwise exercises voting power in a  
13 fiduciary capacity. (TBCA 2.29.B; TREITA 13.10(B).)

14           Sec. 6.153. VOTING OF INTERESTS OWNED BY ANOTHER ENTITY. An  
15 ownership interest in an entity owned by another entity, whether a  
16 domestic or foreign entity, may be voted by the officer, agent, or  
17 proxy as authorized by:

18                   (1) the governing documents of the entity that owns  
19 the interest; or

20                   (2) the governing authority of the entity that owns  
21 the interest, if the governing documents do not provide for the  
22 manner of voting. (TBCA 2.29.E (part); TREITA 13.10(F) (part).)

23           Sec. 6.154. VOTING OF INTERESTS IN AN ESTATE OR TRUST. (a)  
24 An administrator, executor, guardian, or conservator of an estate  
25 who holds an ownership interest as part of the estate may vote the  
26 interest without transferring the interest into the person's name.

27           (b) An ownership interest in the name of a trust may be voted

1 in person or by proxy by:

2 (1) the trustee; or

3 (2) a person authorized to act on behalf of the trust  
4 by the trust agreement or the trustee. (TBCA 2.29.F; TREITA  
5 13.10(G).)

6 Sec. 6.155. VOTING OF INTERESTS BY RECEIVER. (a) A receiver  
7 may vote an ownership interest standing in the name of the receiver.

8 (b) A receiver may vote an ownership interest held by or  
9 under the control of the receiver without transferring the interest  
10 into the receiver's name if the court appointing the receiver  
11 authorizes the receiver to vote the interest. (TBCA 2.29.G; TREITA  
12 13.10(H).)

13 Sec. 6.156. VOTING OF PLEDGED INTERESTS. A pledged  
14 ownership interest may be voted by:

15 (1) the owner of the pledged interest until the  
16 interest is transferred into the pledgee's name; and

17 (2) the pledgee after the pledged interest is  
18 transferred into the pledgee's name. (TBCA 2.29.H; TREITA  
19 13.10(I).)

20 [Sections 6.157-6.200 reserved for expansion]

21 SUBCHAPTER E. ACTION BY WRITTEN CONSENT

22 Sec. 6.201. UNANIMOUS WRITTEN CONSENT TO ACTION. (a) This  
23 section applies to any action required or authorized to be taken  
24 under this code or the governing documents of a filing entity at an  
25 annual or special meeting of the owners or members of the entity or  
26 at a regular, special, or other meeting of the governing authority  
27 of the entity or a committee of the governing authority.

1           (b) The owners or members or the governing authority of a  
2 filing entity, or a committee of the governing authority, may take  
3 action without holding a meeting, providing notice, or taking a  
4 vote if each person entitled to vote on the action signs a written  
5 consent or consents stating the action taken.

6           (c) A written consent described by Subsection (b) has the  
7 same effect as a unanimous vote at a meeting.

8           (d) A filing instrument filed with the filing officer may  
9 state that an action approved by written consent or consents has the  
10 effect of an approval by a unanimous vote at a meeting. (TBCA  
11 9.10.A(1) (part), B; TLLCA 2.23.B(1); TNPCA 9.10.A, B; TREITA  
12 10.30(A), (B).)

13           Sec. 6.202. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT.

14           (a) This section applies to any action required or authorized to be  
15 taken under this code or the governing documents of a filing entity  
16 at an annual or special meeting of the owners or members of the  
17 entity.

18           (b) Except as provided by this code, the certificate of  
19 formation of a filing entity may authorize the owners or members of  
20 the entity to take action without holding a meeting, providing  
21 notice, or taking a vote if owners or members of the entity having  
22 at least the minimum number of votes that would be necessary to take  
23 the action that is the subject of the consent at a meeting, in which  
24 each owner or member entitled to vote on the action is present and  
25 votes, sign a written consent or consents stating the action taken.

26           (c) A written consent or consents described by Subsection  
27 (b) must include the date each owner or member signed the consent

1 and is effective to take the action that is the subject of the  
2 consent only if the consent or consents are delivered to the entity  
3 not later than the 60th day after the date the earliest dated  
4 consent is delivered to the entity as required by Section 6.203.

5 (d) The entity shall promptly notify each owner or member  
6 who did not sign a consent described by Subsection (b) of the action  
7 that is the subject of the consent. (TBCA 9.10.A(1) (part), (2)  
8 (part), (4); TLLCA 2.23.B(1); TNPCA 9.10.C(1), (2) (part), (3).)

9 Sec. 6.203. DELIVERY OF LESS THAN UNANIMOUS WRITTEN  
10 CONSENT. (a) A written consent signed by an owner or member of a  
11 filing entity as provided by Section 6.202, if the consent is not  
12 solicited on behalf of the entity or its governing authority, must  
13 be delivered by hand or certified or registered mail, return  
14 receipt requested, or by other means specified in the governing  
15 documents, to:

16 (1) the entity's registered office or principal  
17 executive office or place of business; or

18 (2) the managerial official or agent of the entity  
19 having custody of the entity's records of meetings of owners or  
20 members.

21 (b) A consent delivered to an entity's principal executive  
22 office or place of business under Subsection (a)(1) must be  
23 addressed to the chief managerial official of the entity or, if the  
24 entity does not have a chief managerial official, the governing  
25 authority of the entity. (TBCA 9.10.A(2) (part); TNPCA 9.10.C(2)  
26 (part).)

27 Sec. 6.204. ADVANCE NOTICE NOT REQUIRED. Advance notice is

1 not required to be given to take an action by written consent as  
2 provided by this subchapter. (TBCA 9.10.D; TREITA 10.30(D).)

3 [Sections 6.205-6.250 reserved for expansion]

4 SUBCHAPTER F. VOTING TRUSTS AND VOTING AGREEMENTS

5 Sec. 6.251. VOTING TRUSTS. (a) Except as provided by this  
6 code or the governing documents, any number of owners of an entity  
7 may enter into a written voting trust agreement to confer on a  
8 trustee the right to vote or otherwise represent ownership or  
9 membership interests of the entity.

10 (b) An ownership or membership interest that is the subject  
11 of a voting trust agreement described by Subsection (a) shall be  
12 transferred to the trustee named in the agreement for purposes of  
13 the agreement.

14 (c) A copy of a voting trust agreement described by  
15 Subsection (a) shall be deposited with the entity at the entity's  
16 principal executive office or registered office and is subject to  
17 examination by:

18 (1) an owner, whether in person or by the owner's agent  
19 or attorney, in the same manner as the owner is entitled to examine  
20 the books and records of the entity; and

21 (2) a holder of a beneficial interest in the voting  
22 trust, whether in person or by the holder's agent or attorney, at  
23 any reasonable time for any proper purpose. (TBCA 2.30.A; TREITA  
24 13.20(A).)

25 Sec. 6.252. VOTING AGREEMENTS. (a) Except as provided by  
26 this code or the governing documents, any number of owners of an  
27 entity, or any number of owners of the entity and the entity itself,



1 may enter into a written voting agreement to provide the manner of  
2 voting of the ownership interests of the entity. A voting agreement  
3 entered into under this subsection is not part of the governing  
4 documents of the entity.

5 (b) A copy of a voting agreement entered into under  
6 Subsection (a):

7 (1) shall be deposited with the entity at the entity's  
8 principal executive office or registered office; and

9 (2) is subject to examination by an owner, whether in  
10 person or by the owner's agent or attorney, in the same manner as  
11 the owner is entitled to examine the books and records of the  
12 entity.

13 (c) A voting agreement entered into under Subsection (a) is  
14 specifically enforceable against the holder of an ownership  
15 interest that is the subject of the agreement, and any successor or  
16 transferee of the holder, if:

17 (1) the voting agreement is noted conspicuously on the  
18 certificate representing the ownership interests; or

19 (2) a notation of the voting agreement is contained in  
20 a notice sent by or on behalf of the entity, if the ownership  
21 interest is not represented by a certificate.

22 (d) Except as provided by Subsection (e), a voting agreement  
23 entered into under Subsection (a) is specifically enforceable  
24 against any person, other than a transferee for value, after the  
25 time the person acquires actual knowledge of the existence of the  
26 agreement.

27 (e) An otherwise enforceable voting agreement entered into

1 under Subsection (a) is not enforceable against a transferee for  
 2 value without actual knowledge of the existence of the agreement at  
 3 the time of the transfer, or any subsequent transferee, without  
 4 regard to value, if the voting agreement is not noted as required by  
 5 Subsection (c).

6 (f) Section 6.251 does not apply to a voting agreement  
 7 entered into under Subsection (a). (TBCA 2.30.B; TREITA 13.20(B).)

8 [Sections 6.253-6.300 reserved for expansion]

9 SUBCHAPTER G. APPLICABILITY OF CHAPTER TO PARTNERSHIPS

10 Sec. 6.301. APPLICABILITY OF CHAPTER TO PARTNERSHIPS. This  
 11 chapter does not apply to a general partnership or a limited  
 12 partnership except to the extent its governing documents specify.  
 13 (New.)

14 Sec. 6.302. APPLICABILITY OF SUBCHAPTERS C AND D TO LIMITED  
 15 LIABILITY COMPANIES. Subchapters C and D do not apply to a limited  
 16 liability company except to the extent its governing documents  
 17 specify. (New.)

18 CHAPTER 7. LIABILITY

19 Sec. 7.001. LIMITATION OF LIABILITY OF GOVERNING PERSON.

20 (a) Subsections (b) and (c) apply to:

21 (1) a domestic entity other than a partnership or  
 22 limited liability company;

23 (2) another organization incorporated or organized  
 24 under another law of this state; and

25 (3) to the extent permitted by federal law, a  
 26 federally chartered bank, savings and loan association, or credit  
 27 union.

1           (b) The certificate of formation or similar instrument of an  
2 organization to which this section applies may provide that a  
3 governing person of the organization is not liable, or is liable  
4 only to the extent provided by the certificate of formation or  
5 similar instrument, to the organization or its owners or members  
6 for monetary damages for an act or omission by the person in the  
7 person's capacity as a governing person.

8           (c) Subsection (b) does not authorize the elimination or  
9 limitation of the liability of a governing person to the extent the  
10 person is found liable under applicable law for:

11                 (1) a breach of the person's duty of loyalty, if any,  
12 to the organization or its owners or members;

13                 (2) an act or omission not in good faith that:

14                         (A) constitutes a breach of duty of the person to  
15 the organization; or

16                         (B) involves intentional misconduct or a knowing  
17 violation of law;

18                 (3) a transaction from which the person received an  
19 improper benefit, regardless of whether the benefit resulted from  
20 an action taken within the scope of the person's duties; or

21                 (4) an act or omission for which the liability of a  
22 governing person is expressly provided by an applicable statute.

23           (d) The liability of a governing person may be limited or  
24 restricted:

25                 (1) in a general partnership to the extent permitted  
26 under Chapter 152;

27                 (2) in a limited partnership to the extent permitted

1 under Chapter 153 and, to the extent applicable to limited  
2 partnerships, Chapter 152; and

3 (3) in a limited liability company to the extent  
4 permitted under Section 101.401. (TMCLA 7.06.)

5 CHAPTER 8. INDEMNIFICATION AND INSURANCE

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 8.001. DEFINITIONS. In this chapter:

8 (1) "Delegate" means a person who is serving or who has  
9 served as a representative of an enterprise at the request of that  
10 enterprise at another enterprise. A person is a delegate to an  
11 employee benefit plan if the performance of the person's official  
12 duties to the enterprise also imposes duties on or otherwise  
13 involves service by the person to the plan or participants in or  
14 beneficiaries of the plan.

15 (2) "Enterprise" means a domestic entity or an  
16 organization subject to this chapter, including a predecessor  
17 domestic entity or organization.

18 (3) "Expenses" includes:

19 (A) court costs, a judgment, a penalty, a  
20 settlement, a fine, and an excise or similar tax, including an  
21 excise tax assessed against the person with respect to an employee  
22 benefit plan; and

23 (B) reasonable attorney's fees.

24 (4) "Former governing person" means a person who was a  
25 governing person of an enterprise.

26 (5) "Judgment" includes an arbitration award.

27 (6) "Official capacity" means:

1 (A) with respect to a governing person, the  
2 office of the governing person in the enterprise or the exercise of  
3 authority by or on behalf of the governing person under this code or  
4 the governing documents of the enterprise; and

5 (B) with respect to a person other than a  
6 governing person, the elective or appointive office, if any, in the  
7 enterprise held by the person or the relationship undertaken by the  
8 person on behalf of the enterprise.

9 (7) "Predecessor enterprise" means a sole  
10 proprietorship or organization that is a predecessor to an  
11 enterprise in:

12 (A) a merger, conversion, consolidation, or  
13 other transaction in which the liabilities of the predecessor  
14 enterprise are transferred or allocated to the enterprise by  
15 operation of law; or

16 (B) any other transaction in which the enterprise  
17 assumes the liabilities of the predecessor enterprise and the  
18 liabilities that are the subject matter of this chapter are not  
19 specifically excluded.

20 (8) "Proceeding" means:

21 (A) a threatened, pending, or completed action or  
22 other proceeding, whether civil, criminal, administrative,  
23 arbitrate, or investigative;

24 (B) an appeal of an action or proceeding  
25 described by Paragraph (A); and

26 (C) an inquiry or investigation that could lead  
27 to an action or proceeding described by Paragraph (A).

1           (9) "Representative" means a person serving as a  
2 partner, director, officer, venturer, proprietor, trustee,  
3 employee, or agent of an enterprise or serving a similar function  
4 for an enterprise.

5           (10) "Respondent" means a person named as a respondent  
6 or defendant in a proceeding. (TBCA 2.02-1.A, P, R (part), T  
7 (part); TNPCA 2.22A.A, P, R(1) (part), T (part); TREITA 9.20(A)  
8 (part), (P), (R) (part), (T) (part); TRLPA 11.01, 11.16, 11.18  
9 (part), 11.20 (part); New.)

10           Sec. 8.002. APPLICATION OF CHAPTER. (a) Except as provided  
11 by Subsection (b), this chapter does not apply to a:

- 12           (1) general partnership; or  
13           (2) limited liability company.

14           (b) The governing documents of a general partnership or  
15 limited liability company may adopt provisions of this chapter or  
16 may contain enforceable provisions relating to:

- 17           (1) indemnification;  
18           (2) advancement of expenses; or  
19           (3) insurance or another arrangement to indemnify or  
20 hold harmless a governing person. (TLLCA 2.20.A; TRPA 1.03(a).)

21           Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. (a) The  
22 certificate of formation of an enterprise may restrict the  
23 circumstances under which the enterprise must or may indemnify or  
24 may advance expenses to a person under this chapter.

25           (b) The written partnership agreement of a limited  
26 partnership may restrict the circumstances in the same manner as  
27 the certificate of formation under Subsection (a). (TBCA 2.02-1.M,

1 U; TNPCA 2.22A.M, U; TREITA 9.20(M), (U); TRLPA 11.13, 11.21.)

2 Sec. 8.004. LIMITATIONS IN CHAPTER. Except as provided in  
3 Section 8.151, a provision for an enterprise to indemnify or  
4 advance expenses to a governing person is valid only to the extent  
5 it is consistent with this chapter. (TBCA 2.02-1.M; TNPCA 2.22A.M;  
6 TREITA 9.20(M); TRLPA 11.13.)

7 [Sections 8.005-8.050 reserved for expansion]

8 SUBCHAPTER B. MANDATORY AND COURT-ORDERED INDEMNIFICATION

9 Sec. 8.051. MANDATORY INDEMNIFICATION. (a) An enterprise  
10 shall indemnify a governing person or former governing person  
11 against reasonable expenses actually incurred by the person in  
12 connection with a proceeding in which the person is a respondent  
13 because the person is or was a governing person if the person is  
14 wholly successful, on the merits or otherwise, in the defense of the  
15 proceeding.

16 (b) A court that determines, in a suit for indemnification,  
17 that a governing person is entitled to indemnification under this  
18 section shall order indemnification and award to the person the  
19 expenses incurred in securing the indemnification. (TBCA 2.02-1.H,  
20 I; TNPCA 2.22A.H, I; TREITA 9.20(H), (I); TRLPA 11.08, 11.09.)

21 Sec. 8.052. COURT-ORDERED INDEMNIFICATION. (a) On  
22 application of a governing person, former governing person, or  
23 delegate and after notice is provided as required by the court, a  
24 court may order an enterprise to indemnify the person to the extent  
25 the court determines that the person is fairly and reasonably  
26 entitled to indemnification in view of all the relevant  
27 circumstances.

1 (b) This section applies without regard to whether the  
 2 governing person, former governing person, or delegate applying to  
 3 the court satisfies the requirements of Section 8.101 or has been  
 4 found liable:

5 (1) to the enterprise; or

6 (2) because the person improperly received a personal  
 7 benefit, without regard to whether the benefit resulted from an  
 8 action taken in the person's official capacity.

9 (c) The indemnification ordered by the court under this  
 10 section is limited to reasonable expenses if the governing person,  
 11 former governing person, or delegate is found liable:

12 (1) to the enterprise; or

13 (2) because the person improperly received a personal  
 14 benefit, without regard to whether the benefit resulted from an  
 15 action taken in the person's official capacity. (TBCA 2.02-1.J;  
 16 TNPCA 2.22A.J; TREITA 9.20(J); TRLPA 11.10.)

17 [Sections 8.053-8.100 reserved for expansion]

18 SUBCHAPTER C. PERMISSIVE INDEMNIFICATION AND ADVANCEMENT  
 19 OF EXPENSES

20 Sec. 8.101. PERMISSIVE INDEMNIFICATION. (a) An enterprise  
 21 may indemnify a governing person, former governing person, or  
 22 delegate who was, is, or is threatened to be made a respondent in a  
 23 proceeding to the extent permitted by Section 8.102 if it is  
 24 determined in accordance with Section 8.103 that:

25 (1) the person:

26 (A) acted in good faith;

27 (B) reasonably believed:



1                   (i) in the case of conduct in the person's  
2 official capacity, that the person's conduct was in the  
3 enterprise's best interests; and

4                   (ii) in any other case, that the person's  
5 conduct was not opposed to the enterprise's best interests; and

6                   (C) in the case of a criminal proceeding, did not  
7 have a reasonable cause to believe the person's conduct was  
8 unlawful;

9                   (2) with respect to expenses, the amount of expenses  
10 other than a judgment is reasonable; and

11                   (3) indemnification should be paid.

12           (b) Action taken or omitted by a governing person or  
13 delegate with respect to an employee benefit plan in the  
14 performance of the person's duties for a purpose reasonably  
15 believed by the person to be in the interest of the participants and  
16 beneficiaries of the plan is for a purpose that is not opposed to  
17 the best interests of the enterprise.

18           (c) Action taken or omitted by a delegate to another  
19 enterprise for a purpose reasonably believed by the delegate to be  
20 in the interest of the other enterprise or its owners or members is  
21 for a purpose that is not opposed to the best interests of the  
22 enterprise.

23           (d) A person does not fail to meet the standard under  
24 Subsection (a)(1) solely because of the termination of a proceeding  
25 by:

26                   (1) judgment;

27                   (2) order;

- 1 (3) settlement;
- 2 (4) conviction; or
- 3 (5) a plea of nolo contendere or its equivalent. (TBCA
- 4 2.02-1.B, D (part), G (part), P, T (part); TNPCA 2.22A.B, D (part),
- 5 G (part), P, T (part); TREITA 9.20(B), (D) (part), (G) (part), (P),
- 6 (T) (part); TRLPA 11.02, 11.04 (part), 11.07 (part), 11.20 (part).)

7 Sec. 8.102. GENERAL SCOPE OF PERMISSIVE INDEMNIFICATION.

8 (a) Subject to Subsection (b), an enterprise may indemnify a

9 governing person, former governing person, or delegate against:

10 (1) a judgment; and

11 (2) expenses, other than a judgment, that are

12 reasonable and actually incurred by the person in connection with a

13 proceeding.

14 (b) Indemnification under this subchapter of a person who is

15 found liable to the enterprise or is found liable because the person

16 improperly received a personal benefit:

17 (1) is limited to reasonable expenses actually

18 incurred by the person in connection with the proceeding;

19 (2) does not include a judgment, a penalty, a fine, and

20 an excise or similar tax, including an excise tax assessed against

21 the person with respect to an employee benefit plan; and

22 (3) may not be made in relation to a proceeding in

23 which the person has been found liable for:

24 (A) wilful or intentional misconduct in the

25 performance of the person's duty to the enterprise;

26 (B) breach of the person's duty of loyalty owed

27 to the enterprise; or

1 (C) an act or omission not committed in good  
2 faith that constitutes a breach of a duty owed by the person to the  
3 enterprise.

4 (c) A governing person, former governing person, or  
5 delegate is considered to have been found liable in relation to a  
6 claim, issue, or matter only if the liability is established by an  
7 order, including a judgment or decree of a court, and all appeals of  
8 the order are exhausted or foreclosed by law. (TBCA 2.02-1.C, D  
9 (part), E, P; TNPCA 2.22A.C, D (part), E, P; TREITA 9.20(C), (D)  
10 (part), (E), (P); TRLPA 11.03, 11.04 (part), 11.05, 11.16.)

11 Sec. 8.103. MANNER FOR DETERMINING PERMISSIVE  
12 INDEMNIFICATION. (a) Except as provided by Subsections (b) and  
13 (c), the determinations required under Section 8.101(a) must be  
14 made by:

15 (1) a majority vote of a quorum composed of the  
16 governing persons who at the time of the vote are disinterested and  
17 independent;

18 (2) if a quorum described by Subdivision (1) cannot be  
19 obtained, a majority vote of a committee of the governing authority  
20 of the enterprise designated to act in the matter by a majority vote  
21 of the governing persons and composed solely of one or more  
22 governing persons who at the time of the vote are disinterested and  
23 independent;

24 (3) special legal counsel selected by the governing  
25 authority of the enterprise, or selected by a committee of the board  
26 of directors, by vote in accordance with Subdivision (1) or (2) or,  
27 if a quorum described by Subdivision (1) cannot be obtained and a

1 committee described by Subdivision (2) cannot be established, by a  
2 majority vote of the governing persons of the enterprise;

3 (4) the owners or members of the enterprise in a vote  
4 that excludes the ownership or membership interests held by each  
5 governing person who is not disinterested and independent; or

6 (5) a unanimous vote of the owners or members of the  
7 enterprise.

8 (b) If special legal counsel determines under Subsection  
9 (a)(3) that a person meets the standard under Section 8.101(a)(1),  
10 the special legal counsel shall determine whether the amount of  
11 expenses other than a judgment is reasonable under Section  
12 8.101(a)(2) but may not determine whether indemnification should be  
13 paid under Section 8.101(a)(3). The determination whether  
14 indemnification should be paid must be made in a manner specified by  
15 Subsection (a)(1), (2), (4), or (5).

16 (c) A provision contained in the governing documents of the  
17 enterprise, a resolution of the owners, members, or governing  
18 authority, or an agreement that requires the indemnification of a  
19 person who meets the standard under Section 8.101(a)(1) constitutes  
20 a determination under Section 8.101(a)(3) that indemnification  
21 should be paid even though the provision may not have been adopted  
22 or authorized in the same manner as the determinations required  
23 under Section 8.101(a). The determinations required under Sections  
24 8.101(a)(1) and (2) must be made in a manner provided by Subsection  
25 (a). (TBCA 2.02-1.F, G; TNPCA 2.22A.F, G; TREITA 9.20(F), (G);  
26 TRLPA 11.06, 11.07.)

27 Sec. 8.104. ADVANCEMENT OF EXPENSES. (a) An enterprise may

1 pay or reimburse reasonable expenses incurred by a governing  
2 person, former governing person, or delegate who was, is, or is  
3 threatened to be made a respondent in a proceeding in advance of the  
4 final disposition of the proceeding without making the  
5 determinations required under Section 8.101(a) after the  
6 enterprise receives:

7 (1) a written affirmation by the person of the person's  
8 good faith belief that the person has met the standard of conduct  
9 necessary for indemnification under this chapter; and

10 (2) a written undertaking by or on behalf of the person  
11 to repay the amount paid or reimbursed if the final determination is  
12 that the person has not met that standard or that indemnification is  
13 prohibited by Section 8.102.

14 (b) A provision in the governing documents of the  
15 enterprise, a resolution of the owners, members, or governing  
16 authority, or an agreement that requires the payment or  
17 reimbursement permitted under this section authorizes that payment  
18 or reimbursement after the enterprise receives an affirmation and  
19 undertaking described by Subsection (a).

20 (c) The written undertaking required by Subsection (a)(2)  
21 must be an unlimited general obligation of the person but need not  
22 be secured and may be accepted by the enterprise without regard to  
23 the person's ability to make repayment. (TBCA 2.02-1.K, L, P; TNPCA  
24 2.22A.K, L, P; TREITA 9.20(K), (L), (P); TRLPA 11.11, 11.12,  
25 11.16.)

26 Sec. 8.105. INDEMNIFICATION OF AND ADVANCEMENT OF EXPENSES  
27 TO PERSONS OTHER THAN GOVERNING PERSONS. (a) Notwithstanding any

1 other provision of this chapter but subject to Sections 8.003 and  
2 8.004 and to the extent consistent with other law, an enterprise may  
3 indemnify and advance expenses to a person who is not a governing  
4 person, including an officer, employee, agent, or delegate, as  
5 provided by:

- 6 (1) the enterprise's governing documents;
- 7 (2) general or specific action of the enterprise's  
8 governing authority;
- 9 (3) resolution of the enterprise's owners or members;
- 10 (4) contract; or
- 11 (5) common law.

12 (b) An enterprise shall indemnify and advance expenses to an  
13 officer to the same extent that indemnification or advancement of  
14 expenses is required under this chapter for a governing person.

15 (c) A person described by Subsection (a) may seek  
16 indemnification or advancement of expenses from an enterprise to  
17 the same extent that a governing person may seek indemnification or  
18 advancement of expenses under this chapter. (TBCA 2.02-1.O, P, Q;  
19 TNPCA 2.22A.O, P, Q; TREITA 9.20(O), (P), (Q); TRLPA 11.15, 11.16,  
20 11.17.)

21 Sec. 8.106. PERMISSIVE INDEMNIFICATION OF AND  
22 REIMBURSEMENT OF EXPENSES TO WITNESSES. Notwithstanding any other  
23 provision of this chapter, an enterprise may pay or reimburse  
24 reasonable expenses incurred by a governing person, officer,  
25 employee, agent, delegate, or other person in connection with that  
26 person's appearance as a witness or other participation in a  
27 proceeding at a time when the person is not a respondent in the

1 proceeding. (TBCA 2.02-1.N; TNPCA 2.22A.N; TREITA 9.20(N); TRLPA  
2 11.14.)

3 [Sections 8.107-8.150 reserved for expansion]

4 SUBCHAPTER D. LIABILITY INSURANCE; REPORTING REQUIREMENTS

5 Sec. 8.151. INSURANCE AND OTHER ARRANGEMENTS. (a)

6 Notwithstanding any other provision of this chapter; an enterprise  
7 may purchase or procure or establish and maintain insurance or  
8 another arrangement to indemnify or hold harmless an existing or  
9 former governing person, delegate, officer, employee, or agent  
10 against any liability:

11 (1) asserted against and incurred by the person in  
12 that capacity; or

13 (2) arising out of the person's status in that  
14 capacity.

15 (b) The insurance or other arrangement established under  
16 Subsection (a) may insure or indemnify against the liability  
17 described by Subsection (a) without regard to whether the  
18 enterprise otherwise would have had the power to indemnify the  
19 person against that liability under this chapter.

20 (c) Insurance or another arrangement that involves  
21 self-insurance or an agreement to indemnify made with the  
22 enterprise or a person that is not regularly engaged in the business  
23 of providing insurance coverage may provide for payment of a  
24 liability with respect to which the enterprise does not otherwise  
25 have the power to provide indemnification only if the insurance or  
26 arrangement is approved by the owners or members of the enterprise.

27 (d) For the benefit of persons to be indemnified by the

1 enterprise, an enterprise may, in addition to purchasing or  
2 procuring or establishing and maintaining insurance or another  
3 arrangement:

4 (1) create a trust fund;

5 (2) establish any form of self-insurance, including a  
6 contract to indemnify;

7 (3) secure the enterprise's indemnity obligation by  
8 grant of a security interest or other lien on the assets of the  
9 enterprise; or

10 (4) establish a letter of credit, guaranty, or surety  
11 arrangement.

12 (e) Insurance or another arrangement established under this  
13 section may be purchased or procured or established and maintained:

14 (1) within the enterprise; or

15 (2) with any insurer or other person considered  
16 appropriate by the governing authority, regardless of whether all  
17 or part of the stock, securities, or other ownership interest in the  
18 insurer or other person is owned in whole or in part by the  
19 enterprise.

20 (f) The governing authority's decision as to the terms of  
21 the insurance or other arrangement and the selection of the insurer  
22 or other person participating in an arrangement is conclusive. The  
23 insurance or arrangement is not voidable and does not subject the  
24 governing persons approving the insurance or arrangement to  
25 liability, on any ground, regardless of whether the governing  
26 persons participating in approving the insurance or other  
27 arrangement are beneficiaries of the insurance or arrangement.



1 This subsection does not apply in case of actual fraud. (TBCA  
2 2.02-1.R; TNPCA 2.22A.R; TREITA 9.20(R); TRLPA 11.18.)

3 Sec. 8.152. REPORTS OF INDEMNIFICATION AND ADVANCES. (a)  
4 An enterprise shall report in writing to the owners or members of  
5 the enterprise an indemnification of or advance of expenses to a  
6 governing person.

7 (b) Subject to Subsection (c), the report must be made with  
8 or before the notice or waiver of notice of the next meeting of the  
9 owners or members of the enterprise and before the next submission  
10 to the owners or members of a consent to action without a meeting.

11 (c) The report must be made not later than the first  
12 anniversary of the date of the indemnification or advance. (TBCA  
13 2.02-1.S; TNPCA 2.22A.S; TREITA 9.20(S); TRLPA 11.19.)

#### 14 CHAPTER 9. FOREIGN ENTITIES

##### 15 SUBCHAPTER A. REGISTRATION

16 Sec. 9.001. FOREIGN ENTITIES REQUIRED TO REGISTER. (a) To  
17 transact business in this state, a foreign entity must register  
18 under this chapter if the entity:

19 (1) is a foreign corporation, foreign limited  
20 partnership, foreign limited liability company, foreign business  
21 trust, foreign real estate investment trust, foreign cooperative,  
22 foreign public or private limited company, or another foreign  
23 entity, the formation of which, if formed in this state, would  
24 require the filing under Chapter 3 of a certificate of formation; or

25 (2) affords limited liability under the law of its  
26 jurisdiction of formation for any owner or member.

27 (b) A foreign entity described by Subsection (a) must

1 maintain the entity's registration while transacting business in  
2 this state. (CAA 43; TBCA 8.01.A (part); TLLCA 7.01.A (part); TNPCA  
3 8.01.A (part); TPCA 19A(a) (part); TRLPA 9.02(a) (part).)

4       Sec. 9.002. FOREIGN ENTITIES NOT REQUIRED TO REGISTER. (a)  
5 A foreign entity not described by Section 9.001(a) may transact  
6 business in this state without registering under this chapter.

7       (b) Subsection (a) does not relieve a foreign entity from  
8 the duty to comply with applicable requirements under other law to  
9 file or register.

10       (c) A foreign entity is not required to register under this  
11 chapter if other state law authorizes the entity to transact  
12 business in this state.

13       (d) A foreign unincorporated nonprofit association is not  
14 required to register under this chapter. (New.)

15       Sec. 9.003. PERMISSIVE REGISTRATION. A foreign entity that  
16 is eligible under other law of this state to register to transact  
17 business in this state, but that is not registered under that law,  
18 may register under this chapter unless that registration is  
19 prohibited by the other law. The registration under this chapter  
20 confers only the authority provided by this chapter. (TLLCA  
21 1.02.A(9).)

22       Sec. 9.004. REGISTRATION PROCEDURE. (a) A foreign filing  
23 entity registers by filing an application for registration as  
24 provided by Chapter 4.

25       (b) The application must state:

26           (1) the entity's name and, if that name would not  
27 comply with Chapter 5, a name that complies with Chapter 5 under

1 which the entity will transact business in this state;

2 (2) the entity's type;

3 (3) the entity's jurisdiction of formation;

4 (4) the date of the entity's formation;

5 (5) that the entity exists as a valid foreign filing  
6 entity of the stated type under the laws of the entity's  
7 jurisdiction of formation;

8 (6) for a foreign entity other than a foreign limited  
9 partnership:

10 (A) each business or activity that the entity  
11 proposes to pursue in this state, which may be stated to be any  
12 lawful business or activity under the law of this state; and

13 (B) that the entity is authorized to pursue the  
14 same business or activity under the laws of the entity's  
15 jurisdiction of formation;

16 (7) the date the foreign entity began or will begin to  
17 transact business in this state;

18 (8) the address of the principal office of the foreign  
19 filing entity;

20 (9) the address of the initial registered office and  
21 the name and the address of the initial registered agent for service  
22 of process that Chapter 5 requires to be maintained;

23 (10) the name and address of each of the entity's  
24 governing persons; and

25 (11) that the secretary of state is appointed the  
26 agent of the foreign filing entity for service of process under the  
27 circumstances provided by Section 5.251.

1 (c) A foreign filing entity may register regardless of any  
2 differences between the law of the entity's jurisdiction of  
3 formation and of this state applicable to the governing of the  
4 internal affairs or to the liability of an owner, member, or  
5 managerial official. (TBCA 8.01.A (part), 8.05.A (part), 8.06.A;  
6 TLLCA 7.01.A (part), 7.05.A, 7.06.A; TNPCA 8.01.A (part), 8.04.A  
7 (part), 8.05.A; TPCA 19A; TRLPA 9.01(b), 9.02(a); TRPA 10.02(a)  
8 (part).)

9 Sec. 9.005. SUPPLEMENTAL INFORMATION REQUIRED IN  
10 APPLICATION FOR REGISTRATION OF FOREIGN FOR-PROFIT CORPORATION. In  
11 addition to the information required by Section 9.004, a foreign  
12 for-profit corporation's application for registration must state  
13 the:

14 (1) aggregate number of shares the for-profit  
15 corporation has authority to issue, itemized by classes, par value  
16 of shares, shares without par value, and any series in a class;

17 (2) aggregate number of shares issued by the  
18 for-profit corporation, itemized by classes, par value of shares,  
19 shares without par value, and any series in a class; and

20 (3) amount of the stated capital of the for-profit  
21 corporation. (TBCA 8.05.A (part).)

22 Sec. 9.006. SUPPLEMENTAL INFORMATION REQUIRED IN  
23 APPLICATION FOR REGISTRATION OF FOREIGN NONPROFIT CORPORATION. In  
24 addition to the information required by Section 9.004, a foreign  
25 nonprofit corporation's application for registration must state:

26 (1) the names and addresses of the nonprofit  
27 corporation's directors and officers;

1           (2) whether or not the nonprofit corporation has  
2 members; and

3           (3) any additional information as necessary or  
4 appropriate to enable the secretary of state to determine whether  
5 the nonprofit corporation is entitled to register to conduct  
6 affairs in this state. (TNPCA 8.04.A (part).)

7           Sec. 9.007. SUPPLEMENTAL INFORMATION REQUIRED IN  
8 APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY  
9 PARTNERSHIP. In addition to the information required by Section  
10 9.004, a foreign limited liability partnership's application for  
11 registration must state:

12           (1) the federal tax identification number of the  
13 partnership;

14           (2) the date of initial registration as a limited  
15 liability partnership under the laws of the state of formation;

16           (3) the number of partners at the date of the  
17 statement; and

18           (4) that the secretary of state is appointed the agent  
19 of the partnership for service of process under the circumstances  
20 set forth by Section 5.251. (TRPA 10.02(a) (part).)

21           Sec. 9.008. EFFECT OF REGISTRATION. (a) The registration  
22 of a foreign entity is effective when the application filed under  
23 Chapter 4 takes effect. The registration remains in effect until  
24 the registration terminates, is withdrawn, or is revoked.

25           (b) Except in a proceeding to revoke the registration, the  
26 secretary of state's issuance of an acknowledgment that the entity  
27 has filed an application is conclusive evidence of the authority of

1 the foreign filing entity to transact business in this state under  
2 the entity's name or under another name stated in the application,  
3 in accordance with Section 9.004(b)(1). (TBCA 8.07; TLLCA 7.07;  
4 TNPCA 8.06; TRLPA 2.07(b).)

5 Sec. 9.009. AMENDMENTS TO REGISTRATION. (a) A foreign  
6 filing entity must amend its registration to change its name or the  
7 business or activity stated in its application for registration if  
8 the name or business or activity has changed.

9 (b) A foreign filing entity may amend its application for  
10 registration by filing an application for amendment of registration  
11 in the manner required by Chapter 4.

12 (c) The application for amendment must be filed on or before  
13 the 91st day following the date of the change. (TBCA 8.13.A, B, D;  
14 TLLCA 7.08.A, B, D; TNPCA 8.12.A, B, D; TRLPA 9.05.)

15 Sec. 9.010. NAME CHANGE OF FOREIGN ENTITY. If a foreign  
16 entity authorized to conduct affairs in this state changes its name  
17 to a name that would cause the entity to be denied an application  
18 for registration under this subchapter, the entity's registration  
19 must be suspended. An entity the registration of which has been  
20 suspended under this section may conduct affairs in this state only  
21 after the entity:

22 (1) changes its name to a name that is available to it  
23 under the laws of this state; or

24 (2) otherwise complies with this chapter. (TBCA 8.04;  
25 TLLCA 7.04; TNPCA 8.03.B.)

26 Sec. 9.011. VOLUNTARY WITHDRAWAL OF REGISTRATION. (a) A  
27 foreign filing entity registered in this state may withdraw the

1 entity's registration at any time by filing a certificate of  
2 withdrawal in the manner required by Chapter 4.

3 (b) A certificate of withdrawal must state:

4 (1) the name of the foreign filing entity as  
5 registered in this state;

6 (2) the type of entity and the entity's jurisdiction of  
7 formation;

8 (3) the address of the principal office of the foreign  
9 filing entity;

10 (4) that the foreign filing entity no longer is  
11 transacting business in this state;

12 (5) that the foreign filing entity:

13 (A) revokes the authority of the entity's  
14 registered agent in this state to accept service of process; and

15 (B) consents that service of process in any  
16 action, suit, or proceeding stating a cause of action arising in  
17 this state during the time the foreign filing entity was authorized  
18 to transact business in this state may be made on the foreign filing  
19 entity by serving the secretary of state;

20 (6) an address to which the secretary of state may mail  
21 a copy of any process against the foreign filing entity served on  
22 the secretary of state; and

23 (7) that any money due or accrued to the state has been  
24 paid or that adequate provision has been made for the payment of  
25 that money.

26 (c) A certificate from the comptroller that all franchise  
27 taxes have been paid must be filed with the certificate of

1 withdrawal in accordance with Chapter 4 if the foreign filing  
2 entity is a foreign professional corporation, foreign for-profit  
3 corporation, or foreign limited liability company.

4 (d) If the existence or separate existence of a foreign  
5 filing entity registered in this state terminates because of  
6 dissolution, termination, merger, conversion, or other  
7 circumstances, a certificate by an authorized governmental  
8 official of the entity's jurisdiction of formation that evidences  
9 the termination shall be filed with the secretary of state.

10 (e) The registration of the foreign filing entity in this  
11 state terminates when a certificate of withdrawal under this  
12 section or a certificate evidencing termination under Subsection  
13 (d) is filed:

14 (f) If the address stated in a certificate of withdrawal  
15 under Subsection (b)(6) changes, the foreign filing entity must  
16 promptly amend the certificate of withdrawal to update the address.

17 (g) A certificate of withdrawal does not terminate the  
18 authority of the secretary of state to accept service of process on  
19 the foreign filing entity with respect to a cause of action arising  
20 out of business or activity in this state. (TBCA 8.14, 8.15; TLLCA  
21 7.09, 7.10; TNPCA 8.13; TRLPA 9.06.)

22 [Sections 9.012-9.050 reserved for expansion]

### 23 SUBCHAPTER B. FAILURE TO REGISTER

24 Sec. 9.051. TRANACTING BUSINESS OR MAINTAINING COURT  
25 PROCEEDING WITHOUT REGISTRATION. (a) On application by the  
26 attorney general, a court may enjoin a foreign filing entity or the  
27 entity's agent from transacting business in this state if:



1 (1) the entity is not registered in this state; or

2 (2) the entity's registration is obtained on the basis  
3 of a false or misleading representation.

4 (b) A foreign filing entity or the entity's legal  
5 representative may not maintain an action, suit, or proceeding in a  
6 court of this state, brought either directly by the entity or in the  
7 form of a derivative action in the entity's name, on a cause of  
8 action that arises out of the transaction of business in this state  
9 unless the foreign filing entity is registered in accordance with  
10 this chapter. This subsection does not affect the rights of an  
11 assignee of the foreign filing entity as:

12 (1) the holder in due course of a negotiable  
13 instrument; or

14 (2) the bona fide purchaser for value of a warehouse  
15 receipt, security, or other instrument made negotiable by law.

16 (c) The failure of a foreign filing entity to register does  
17 not:

18 (1) affect the validity of any contract or act of the  
19 foreign filing entity;

20 (2) prevent the entity from defending an action, suit,  
21 or proceeding in a court in this state; or

22 (3) except as provided by Subsection (d), cause any  
23 owner, member, or managerial official of the foreign filing entity  
24 to become liable for the debts, obligations, or liabilities of the  
25 foreign filing entity.

26 (d) Subsection (c)(3) does not apply to a general partner of  
27 a foreign limited partnership. (TBCA 8.18.A, B; TLLCA 7.13.A, B;

1 TNPCA 8.17; TRLPA 9.07(a), (b), (c), 9.08; TRPA 10.03.)

2 Sec. 9.052. CIVIL PENALTY. (a) A foreign filing entity that  
3 transacts business in this state and is not registered under this  
4 chapter is liable to this state for a civil penalty in an amount  
5 equal to all:

6 (1) fees and taxes that would have been imposed by law  
7 on the entity had the entity registered when first required and  
8 filed all reports required by law; and

9 (2) penalties and interest imposed by law for failure  
10 to pay those fees and taxes.

11 (b) The attorney general may bring suit to recover amounts  
12 due to this state under this section. (TBCA 8.18.C (part); TLLCA  
13 7.13.C (part); TRLPA 9.07(d) (part).)

14 Sec. 9.053. VENUE. In addition to any other venue  
15 authorized by law, a suit under Section 9.051 or 9.052 may be  
16 brought in Travis County. (New.)

17 Sec. 9.054. LATE FILING FEE. The secretary of state may  
18 collect from a foreign filing entity a late filing fee equal to the  
19 registration fee for the entity for each year of delinquency if the  
20 entity has transacted business in this state for more than 90 days.  
21 The secretary may condition the effectiveness of a registration on  
22 the payment of the late filing fee. (TBCA 8.18.C (part); TLLCA  
23 7.13.C (part); TRLPA 9.07(d).)

24 Sec. 9.055. REQUIREMENTS OF OTHER LAW. This chapter does  
25 not excuse a foreign entity from complying with duties imposed  
26 under other law, including other chapters of this code, relating to  
27 filing or registration requirements. (TBCA 8.02; TLLCA 7.02; TNPCA

1 8.02; TRLPA 9.01(c).)

2 [Sections 9.056-9.100 reserved for expansion]

3 SUBCHAPTER C. REVOCATION OF REGISTRATION BY SECRETARY OF STATE

4 Sec. 9.101. REVOCATION OF REGISTRATION BY SECRETARY OF  
5 STATE. (a) If it appears to the secretary of state that, with  
6 respect to a foreign filing entity, a circumstance described by  
7 Subsection (b) exists, the secretary of state may notify the entity  
8 of the circumstance by mail or certified mail addressed to the  
9 foreign filing entity at the entity's registered office or  
10 principal place of business as shown on the records of the secretary  
11 of state.

12 (b) The secretary of state may revoke a foreign filing  
13 entity's registration if the secretary of state finds that the  
14 entity has failed to, and, before the 91st day after the date notice  
15 was mailed, has not corrected the entity's failure to:

16 (1) file a report within the period required by law or  
17 pay a fee or penalty prescribed by law when due and payable;

18 (2) maintain a registered agent or registered office  
19 in this state as required by law;

20 (3) amend its registration when required by law; or

21 (4) pay a fee required in connection with a filing, or  
22 payment of the fee was dishonored when presented by the state for  
23 payment. (TBCA 8.16.B, C(1); TLLCA 7.11.B, C(1); TNPCA 8.15.B,  
24 C(1); TRLPA 13.06(a), (b); TRPA 10.02(i).)

25 Sec. 9.102. CERTIFICATE OF REVOCATION. (a) If revocation  
26 of a registration is required, the secretary of state shall:

27 (1) file a certificate of revocation; and

1           (2) deliver a certificate of revocation by regular or  
2 certified mail to the foreign filing entity at its registered  
3 office or principal place of business.

4           (b) The certificate of revocation must state:

5                 (1) that the foreign filing entity's registration has  
6 been revoked; and

7                 (2) the date and cause of the revocation.

8           (c) Except as otherwise provided by this chapter, the  
9 revocation of a foreign filing entity's registration under this  
10 subchapter takes effect on the date the certificate of revocation  
11 is filed. (TBCA 8.16.D; TLLCA 7.11.D; TNPCA 8.15.D.)

12           Sec. 9.103. REINSTATEMENT BY SECRETARY OF STATE AFTER  
13 REVOCATION. (a) The secretary of state shall reinstate the  
14 registration of an entity that has been revoked under this  
15 subchapter if the entity files an application for reinstatement in  
16 accordance with Section 9.104, accompanied by each amendment to the  
17 entity's registration that is required by intervening events,  
18 including circumstances requiring an amendment to the name of the  
19 entity or the name under which the entity is registered to transact  
20 business in this state as described in Section 9.105, and:

21                 (1) the entity has corrected the circumstances that  
22 led to the revocation and any other circumstances that may exist of  
23 the types described by Section 9.101(b), including the payment of  
24 fees, interest, or penalties; or

25                 (2) the secretary of state finds that the  
26 circumstances that led to the revocation did not exist at the time  
27 of revocation.

1           (b) If a foreign filing entity's registration is reinstated  
2 before the third anniversary of the revocation, the entity is  
3 considered to have been registered or in existence at all times  
4 during the period of revocation. (TBCA 8.16.E (part); TLLCA 7.11.E  
5 (part); TNPCA 8.15.E (part).)

6           Sec. 9.104. PROCEDURES FOR REINSTATEMENT. (a) A foreign  
7 filing entity, to have its registration reinstated, must complete  
8 the requirements of this section not later than the third  
9 anniversary of the date the revocation of the entity's registration  
10 took effect.

11           (b) The foreign filing entity shall file a certificate of  
12 reinstatement in accordance with Chapter 4.

13           (c) The certificate of reinstatement must contain:

14                   (1) the name of the foreign filing entity;

15                   (2) the filing number assigned by the filing officer  
16 to the entity;

17                   (3) the effective date of the revocation of the  
18 entity's registration; and

19                   (4) the name of the entity's registered agent and the  
20 address of the entity's registered office.

21           (d) A letter of eligibility from the comptroller stating  
22 that the foreign filing entity has satisfied all franchise tax  
23 liabilities and its registration may be reinstated must be filed  
24 with the certificate of reinstatement if the foreign filing entity  
25 is a professional corporation, for-profit corporation, or limited  
26 liability company.

27           (e) The registration of a foreign filing entity may not be

1 reinstated under this section if the termination occurred as a  
2 result of:

3 (1) an order of a court; or

4 (2) forfeiture under the Tax Code. (TBCA 8.16.E  
5 (part); TLLCA 7.11.E (part); TNPCA 8.15.E (part).)

6 Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED  
7 NAME. If the secretary of state determines that a foreign filing  
8 entity's name or the name under which it is registered to transact  
9 business in this state is the same as, deceptively similar to, or  
10 similar to a name of a filing entity or foreign filing entity as  
11 provided by or reserved or registered under this code, the  
12 secretary of state may not accept for filing the certificate of  
13 reinstatement unless the foreign filing entity amends its  
14 registration to change its name or obtains consent for the use of  
15 the similar name. (TBCA 8.16.E (part); TLLCA 7.11.E (part); TNPCA  
16 8.15.E (part); TRLPA 13.09(b) (part).)

17 Sec. 9.106. REINSTATEMENT OF REGISTRATION FOLLOWING TAX  
18 FORFEITURE. A foreign filing entity whose registration has been  
19 revoked under the provisions of the Tax Code must follow the  
20 procedures in the Tax Code to reinstate its registration. (Op. Tex.  
21 Att'y Gen. No. M-600 (1970).)

22 [Sections 9.107-9.150 reserved for expansion]

23 SUBCHAPTER D. JUDICIAL REVOCATION OF REGISTRATION

24 Sec. 9.151. REVOCATION OF REGISTRATION BY COURT ACTION. (a)  
25 A court may revoke the registration of a foreign filing entity if,  
26 as a result of an action brought under Section 9.153, the court  
27 finds that one or more of the following problems exist:

1 (1) the entity did not comply with a condition  
2 precedent to the issuance of the entity's registration or an  
3 amendment to the registration;

4 (2) the entity's registration or any amendment to the  
5 entity's registration was fraudulently filed;

6 (3) a misrepresentation of a material matter was made  
7 in an application, report, affidavit, or other document the entity  
8 submitted under this code;

9 (4) the entity has continued to transact business  
10 beyond the scope of the purpose or purposes expressed in the  
11 entity's registration; or

12 (5) public interest requires revocation because:

13 (A) the entity has been convicted of a felony or a  
14 high managerial agent of the entity has been convicted of a felony  
15 committed in the conduct of the entity's affairs;

16 (B) the entity or the high managerial agent has  
17 engaged in a persistent course of felonious conduct; and

18 (C) revocation is necessary to prevent future  
19 felonious conduct of the same character.

20 (b) Sections 9.152-9.157 do not apply to Subsection (a)(5).  
21 (TBCA 8.16.A, F, G; TLLCA 7.11.A, F; TNPCA 8.15.A, F, G.)

22 Sec. 9.152. NOTIFICATION OF CAUSE BY SECRETARY OF STATE.

23 (a) The secretary of state shall provide to the attorney general:

24 (1) the name of a foreign filing entity that has given  
25 cause under Section 9.151 for revocation of its registration; and

26 (2) the facts relating to the cause for revocation.

27 (b) When notice is provided under Subsection (a), the

1 secretary of state shall send written notice of the circumstances  
2 to the foreign filing entity at its registered office in this state.  
3 The notice must state that the secretary of state has given notice  
4 under Subsection (a) and the grounds for the notification. The  
5 secretary of state must record the date a notice required by this  
6 subsection is sent.

7 (c) A court shall accept a certificate issued by the  
8 secretary of state as to the facts relating to the cause for  
9 judicial revocation of a foreign filing entity's registration and  
10 the sending of a notice under Subsection (b) as prima facie evidence  
11 of the facts stated in the certificate and the sending of the  
12 notice. (TBCA 7.02.A, B; TNPCA 7.02.A, B; TLLCA 8.12.A (part).)

13 Sec. 9.153. FILING OF ACTION BY ATTORNEY GENERAL. The  
14 attorney general shall file an action against a foreign filing  
15 entity in the name of the state seeking the revocation of the  
16 entity's registration if:

17 (1) the entity has not cured the problems for which  
18 revocation is sought before the 31st day after the date the notice  
19 under Section 9.152(b) is mailed; and

20 (2) the attorney general determines that cause exists  
21 for judicial revocation of the entity's registration under Section  
22 9.151. (TBCA 7.02.C; TNPCA 7.02.C; TLLCA 8.12.A (part).)

23 Sec. 9.154. CURE BEFORE FINAL JUDGMENT. An action filed by  
24 the attorney general under Section 9.153 shall be abated if, before  
25 a district court renders judgment on the action, the foreign filing  
26 entity:

27 (1) cures the problems for which revocation is sought;



1 and

2 (2) pays the costs of the action. (TBCA 7.02.D; TNPCA  
3 7.02.D; TLLCA 8.12.A (part).)

4 Sec. 9.155. JUDGMENT REQUIRING REVOCATION. If a district  
5 court finds in an action brought under this subchapter that proper  
6 grounds exist under Section 9.151(a) for revocation of the foreign  
7 filing entity's registration, the court shall:

8 (1) make findings to that effect; and

9 (2) subject to Section 9.156, enter a judgment not  
10 earlier than the fifth day after the date the court makes its  
11 findings. (TBCA 7.02.E (part); TNPCA 7.02.E (part); TLLCA 8.12.A  
12 (part).)

13 Sec. 9.156. STAY OF JUDGMENT. (a) If, in an action brought  
14 under this subchapter, a foreign filing entity has proved by a  
15 preponderance of the evidence and obtained a finding that the  
16 problems for which the foreign filing entity has been found guilty  
17 were not wilful or the result of a failure to take reasonable  
18 precautions, the entity may make a sworn application to the court  
19 for a stay of entry of the judgment to allow the foreign filing  
20 entity a reasonable opportunity to cure the problems for which it  
21 has been found guilty. An application made under this subsection  
22 must be made not later than the fifth day after the date the court  
23 makes its findings under Section 9.155.

24 (b) After a foreign filing entity has made an application  
25 under Subsection (a), a court shall stay the entry of the judgment  
26 if the court is reasonably satisfied after considering the  
27 application and evidence offered for or against the application

1 that the foreign filing entity:

2 (1) is able and intends in good faith to cure the  
3 problems for which it has been found guilty; and

4 (2) has not applied for the stay without just cause.

5 (c) A court shall stay an entry of judgment under Subsection  
6 (b) for the period the court determines is reasonably necessary to  
7 afford the foreign filing entity the opportunity to cure its  
8 problems if the entity acts with reasonable diligence. The court  
9 may not stay the entry of the judgment for longer than 60 days after  
10 the date the court's findings are made.

11 (d) The court shall dismiss an action against a foreign  
12 filing entity that, during the period the action is stayed by the  
13 court under this section, cures the problems for which revocation  
14 is sought and pays all costs accrued in the action.

15 (e) If a court finds that a foreign filing entity has not  
16 cured the problems for which revocation is sought within the period  
17 prescribed by Subsection (c), the court shall enter final judgment  
18 requiring revocation of the foreign filing entity's registration.  
19 (TBCA 7.02.E (part); TNPCA 7.02.E (part); TLLCA 8.12.A (part).)

20 Sec. 9.157. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF  
21 FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a  
22 trial court's findings against a foreign filing entity under this  
23 subchapter shall remand the case to the trial court with  
24 instructions to grant the foreign filing entity an opportunity to  
25 cure the problems for which the entity has been found guilty if:

26 (1) the foreign filing entity did not make an  
27 application to the trial court for stay of the entry of the

1 judgment;

2 (2) the appellate court is satisfied that the appeal  
3 was taken in good faith and not for purpose of delay or with no  
4 sufficient cause;

5 (3) the appellate court finds that the problems for  
6 which the foreign filing entity has been found guilty are capable of  
7 being cured; and

8 (4) the foreign filing entity has prayed for the  
9 opportunity to cure its problems in the appeal.

10 (b) The appellate court shall determine the period, which  
11 may not be longer than 60 days after the date the case is remanded to  
12 the trial court, to be afforded to a foreign filing entity to enable  
13 the foreign filing entity to cure its problems under Subsection  
14 (a).

15 (c) The trial court to which an action against a foreign  
16 filing entity has been remanded under this section shall dismiss  
17 the action if, during the period prescribed by the appellate court  
18 for that conduct, the foreign filing entity cures the problems for  
19 which revocation is sought and pays all costs accrued in the action.

20 (d) If a foreign filing entity has not cured the problems  
21 for which revocation is sought within the period prescribed by the  
22 appellate court under Subsection (b), the judgment requiring  
23 revocation shall become final. (TBCA 7.02.F; TNPCA 7.02.F; TLLCA  
24 8.12.A (part).)

25 Sec. 9.158. JURISDICTION AND VENUE. (a) The attorney  
26 general shall bring an action for the revocation of the  
27 registration of a foreign filing entity under this subchapter in:

1           (1) a district court of the county in which the  
2 registered office or principal place of business of the filing  
3 entity in this state is located; or

4           (2) a district court of Travis County.

5           (b) A district court described by Subsection (a) has  
6 jurisdiction of the action for revocation of the registration of  
7 the foreign filing entity. (TBCA 7.03 (part); TNPCA 7.03 (part);  
8 TLLCA 8.12.A (part).)

9           Sec. 9.159. PROCESS IN STATE ACTION. Citation in an action  
10 for the involuntary revocation of a foreign filing entity's  
11 registration under this subchapter shall be issued and served as  
12 provided by law. (TBCA 7.03 (part); TNPCA 7.03 (part); TLLCA 8.12.A  
13 (part).)

14           Sec. 9.160. PUBLICATION OF NOTICE. (a) If process in an  
15 action under this subchapter is returned not found, the attorney  
16 general shall publish notice in a newspaper in the county in which  
17 the registered office of the foreign filing entity in this state is  
18 located. The notice must contain:

19           (1) a statement of the pendency of the action;  
20           (2) the title of the court;  
21           (3) the title of the action; and  
22           (4) the earliest date on which default judgment may be  
23 entered by the court.

24           (b) Notice under this section must be published at least  
25 once a week for two consecutive weeks beginning at any time after  
26 the citation has been returned.

27           (c) The attorney general may include in one published notice

1 the name of each foreign filing entity against which an action for  
2 involuntary revocation is pending in the same court.

3 (d) Not later than the 10th day after the date notice under  
4 this section is first published, the attorney general shall send a  
5 copy of the notice to the appropriate foreign filing entity at the  
6 foreign filing entity's registered office in this state. A  
7 certificate from the attorney general regarding the sending of the  
8 notice is prima facie evidence that notice was sent under this  
9 section.

10 (e) Unless a foreign filing entity has been served with  
11 citation, a default judgment may not be taken against the entity  
12 before the 31st day after the date the notice is first published.  
13 (TBCA 7.03 (part); TNPCA 7.03 (part); TLLCA 8.12.A (part).)

14 Sec. 9.161. FILING OF DECREE OF REVOCATION AGAINST FOREIGN  
15 FILING ENTITY. (a) The clerk of a court that enters a decree  
16 revoking the registration of a foreign filing entity shall file a  
17 certified copy of the decree in accordance with Chapter 4.

18 (b) A fee may not be charged for the filing of a decree under  
19 this section. (TBCA 8.17; TLLCA 7.12; TNPCA 8.16.)

20 [Sections 9.162-9.200 reserved for expansion]

21 SUBCHAPTER E. BUSINESS, RIGHTS, AND OBLIGATIONS

22 Sec. 9.201. BUSINESS OF FOREIGN ENTITY. A foreign entity  
23 may not conduct in this state a business or activity that is not  
24 permitted by this code to be transacted by the domestic entity to  
25 which it most closely corresponds, unless other law of this state  
26 authorizes the entity to conduct the business or activity. (TBCA  
27 8.01.A (part); TLLCA 7.01.A (part); TNPCA 8.01.A (part).)

1           Sec. 9.202. RIGHTS AND PRIVILEGES. A foreign nonfiling  
2 entity or a foreign filing entity registered under this chapter  
3 enjoys the same but no greater rights and privileges as the domestic  
4 entity to which it most closely corresponds. (TBCA 8.02 (part);  
5 TLLCA 7.02 (part); TNPCA 8.02 (part); TRLPA 9.01(c).)

6           Sec. 9.203. OBLIGATIONS AND LIABILITIES. Subject to this  
7 code and other laws of this state and except as provided by  
8 Subchapter C, Chapter 1, in any matter that affects the transaction  
9 of intrastate business in this state, a foreign entity and each  
10 member, owner, or managerial official of the entity is subject to  
11 the same duties, restrictions, penalties, and liabilities imposed  
12 on a domestic entity to which it most closely corresponds or on a  
13 member, owner, or managerial official of that domestic entity.  
14 (TBCA 8.02 (part); TLLCA 7.02 (part); TNPCA 8.02 (part).)

15           Sec. 9.204. RIGHT OF FOREIGN FILING ENTITY TO PARTICIPATE  
16 IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. A vote cast or consent  
17 provided by a foreign filing entity with respect to its ownership or  
18 membership interest in a domestic entity of which the foreign  
19 filing entity is a lawful owner or member, and the foreign filing  
20 entity's participation in the management and control of the  
21 business and affairs of the domestic entity to the extent of the  
22 participation of other owners or members, are not invalidated if  
23 the foreign filing entity does not register to transact business in  
24 this state, subject to all law governing a domestic entity,  
25 including the antitrust law of this state. (TBCA 2.29.E; TREITA  
26 13.10(F).)

27                           [Sections 9.205-9.250 reserved for expansion]

## 1 SUBCHAPTER F. DETERMINATION OF TRANSACTING BUSINESS IN

## 2 THIS STATE

3 Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING  
4 BUSINESS IN THIS STATE. For purposes of this chapter, activities  
5 that do not constitute transaction of business in this state  
6 include:

7 (1) maintaining or defending an action or suit or an  
8 administrative or arbitration proceeding, or effecting the  
9 settlement of:

10 (A) such an action, suit, or proceeding; or

11 (B) a claim or dispute to which the entity is a  
12 party;

13 (2) holding a meeting of the entity's managerial  
14 officials, owners, or members or carrying on another activity  
15 concerning the entity's internal affairs;

16 (3) maintaining a bank account;

17 (4) maintaining an office or agency for:

18 (A) transferring, exchanging, or registering  
19 securities the entity issues; or

20 (B) appointing or maintaining a trustee or  
21 depositary related to the entity's securities;

22 (5) voting the interest of an entity the foreign  
23 entity has acquired;

24 (6) effecting a sale through an independent  
25 contractor;

26 (7) creating, as borrower or lender, or acquiring  
27 indebtedness or a mortgage or other security interest in real or

1 personal property;

2 (8) securing or collecting a debt due the entity or  
3 enforcing a right in property that secures a debt due the entity;

4 (9) transacting business in interstate commerce;

5 (10) conducting an isolated transaction that:

6 (A) is completed within a period of 30 days; and

7 (B) is not in the course of a number of repeated,  
8 similar transactions;

9 (11) in a case that does not involve an activity that  
10 would constitute the transaction of business in this state if the  
11 activity were one of a foreign entity acting in its own right:

12 (A) exercising a power of executor or  
13 administrator of the estate of a nonresident decedent under  
14 ancillary letters issued by a court of this state; or

15 (B) exercising a power of a trustee under the  
16 will of a nonresident decedent, or under a trust created by one or  
17 more nonresidents of this state, or by one or more foreign entities;

18 (12) regarding a debt secured by a mortgage or lien on  
19 real or personal property in this state:

20 (A) acquiring the debt in a transaction outside  
21 this state or in interstate commerce;

22 (B) collecting or adjusting a principal or  
23 interest payment on the debt;

24 (C) enforcing or adjusting a right or property  
25 securing the debt;

26 (D) taking an action necessary to preserve and  
27 protect the interest of the mortgagee in the security; or



1 (E) engaging in any combination of transactions  
2 described by this subdivision;

3 (13) investing in or acquiring, in a transaction  
4 outside of this state, a royalty or other nonoperating mineral  
5 interest; or

6 (14) the execution of a division order, contract of  
7 sale, or other instrument incidental to ownership of a nonoperating  
8 mineral interest. (TBCA 8.01.B; TLLCA 7.01.B; TNPCA 8.01.B; TRLPA  
9 9.02(b); TRPA 10.04.)

10 Sec. 9.252. OTHER ACTIVITIES. The list provided by Section  
11 9.251 is not exclusive of activities that do not constitute  
12 transacting business in this state for the purposes of this code.  
13 (TBCA 8.01.B (part); TLLCA 7.01.B (part); TNPCA 8.01.B (part);  
14 TRLPA 9.02(b) (part); TRPA 10.04 (part).)

15 [Sections 9.253-9.300 reserved for expansion]

16 SUBCHAPTER G. MISCELLANEOUS PROVISIONS

17 Sec. 9.301. APPLICABILITY OF CODE TO CERTAIN FOREIGN  
18 ENTITIES. (a) Except as provided by a statute described by this  
19 subsection, the provisions of this code governing a foreign entity  
20 apply to a foreign entity registered or granted authority to  
21 transact business in this state under:

22 (1) a special statute that does not contain a  
23 provision regarding a matter provided for by this code with respect  
24 to a foreign entity; or

25 (2) another statute that specifically provides that  
26 the general law for the granting of a registration or certificate of  
27 authority to the foreign entity to transact business in this state

1 supplements the special statute.

2 (b) Except as provided by a special statute described by  
3 Subsection (a), a document required to be filed with the secretary  
4 of state under the special statute must be signed and filed in  
5 accordance with Chapter 4. (TBCA 9.14.A; TMLCA 1.03; TNPCA  
6 10.04.A.)

7 CHAPTER 10. MERGERS, INTEREST EXCHANGES, CONVERSIONS,  
8 AND SALES OF ASSETS

9 SUBCHAPTER A. MERGERS

10 Sec. 10.001. ADOPTION OF PLAN OF MERGER. (a) A domestic  
11 entity may effect a merger by complying with the applicable  
12 provisions of this code. A merger must be set forth in a plan of  
13 merger.

14 (b) To effect a merger, each domestic entity that is a party  
15 to the merger must act on and approve the plan of merger in the  
16 manner prescribed by this code for the approval of mergers by the  
17 domestic entity.

18 (c) A domestic entity subject to dissenters' rights must  
19 provide the notice required by Section 10.355.

20 (d) If one or more non-code organizations is a party to the  
21 merger or is to be created by the plan of merger:

22 (1) to effect the merger each non-code organization  
23 must take all action required by this code and its governing  
24 documents;

25 (2) the merger must be permitted by:

26 (A) the law of the state or country under whose  
27 law each non-code organization is incorporated or organized; or

1 (B) the governing documents of each non-code  
2 organization if the documents are not inconsistent with the law  
3 under which the non-code organization is incorporated or organized;  
4 and

5 (3) in effecting the merger each non-code organization  
6 that is a party to the merger must comply with:

7 (A) the applicable laws under which it is  
8 incorporated or organized; and

9 (B) the governing documents of the non-code  
10 organization.

11 (e) A domestic entity may not merge under this subchapter  
12 if an owner or member of that entity that is a party to the merger  
13 will, as a result of the merger, become personally liable, without  
14 that owner's or member's consent, for a liability or other  
15 obligation of any other person. (TBCA 5.01.A, 5.03.A; TLLCA 10.01;  
16 TNPCA 5.01.A, 5.02.A, 5.07.A; TREITA 23.10(A); TRLPA 2.11(a)  
17 (part); TRPA 9.02(a) (part).)

18 Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A  
19 plan of merger must include:

20 (1) the name of each organization that is a party to  
21 the merger;

22 (2) the name of each organization that will survive  
23 the merger;

24 (3) the name of each new organization that is to be  
25 created by the plan of merger;

26 (4) a description of the organizational form of each  
27 organization that is a party to the merger or that is to be created

1 by the plan of merger and its jurisdiction of formation;

2 (5) the manner and basis of converting any of the  
3 ownership or membership interests of each organization that is a  
4 party to the merger into:

5 (A) ownership interests, membership interests,  
6 obligations, rights to purchase securities, or other securities of  
7 one or more of the surviving or new organizations;

8 (B) cash;

9 (C) other property, including ownership  
10 interests, membership interests, obligations, rights to purchase  
11 securities, or other securities of any other person or entity; or

12 (D) any combination of the items described by  
13 Paragraphs (A)-(C);

14 (6) the certificate of formation of each new domestic  
15 filing entity to be created by the plan of merger;

16 (7) the governing documents of each new domestic  
17 nonfiling entity to be created by the plan of merger; and

18 (8) the governing documents of each non-code  
19 organization that:

20 (A) is to survive the merger or to be created by  
21 the plan of merger; and

22 (B) is an entity that is not:

23 (i) organized under the laws of any state or  
24 the United States; or

25 (ii) required to file its certificate of  
26 formation or similar document under which the entity is organized  
27 with the appropriate governmental authority.

1 (b) An item required by Subsections (a)(6)-(8) may be  
2 included in the plan of merger by an attachment or exhibit to the  
3 plan.

4 (c) If the plan of merger provides for a manner and basis of  
5 converting an ownership or membership interest that may be  
6 converted in a manner or basis different than any other ownership or  
7 membership interest of the same class or series of the ownership or  
8 membership interest, the manner and basis of conversion must be  
9 included in the plan of merger in the same manner as provided by  
10 Subsection (a)(5). (TBCA 5.01.B (part); TLLCA 10.02.A (part);  
11 TNPCA 5.01.B (part), 5.02.B (part); TREITA 23.10(B) (part); TRLPA  
12 2.11(b) (part); TRPA 9.02(b) (part).)

13 Sec. 10.003. CONTENTS OF PLAN OF MERGER: MORE THAN ONE  
14 SUCCESSOR. If more than one organization is to survive or to be  
15 created by the plan of merger, the plan of merger must include:

16 (1) the manner and basis of allocating and vesting the  
17 property of each organization that is a party to the merger among  
18 one or more of the surviving or new organizations;

19 (2) the name of each surviving or new organization  
20 that is primarily obligated for the payment of the fair value of an  
21 ownership or membership interest of an owner or member of a domestic  
22 entity subject to dissenters' rights that is a party to the merger  
23 and who complies with the requirements for dissent and appraisal  
24 under this code applicable to the domestic entity; and

25 (3) the manner and basis of allocating each liability  
26 and obligation of each organization that is a party to the merger,  
27 or adequate provisions for the payment and discharge of each

1 liability and obligation, among one or more of the surviving or new  
2 organizations. (TBCA 5.01.B (part); TLLCA 10.02.A (part); TREITA  
3 23.10(B) (part); TRLPA 2.11(b) (part); TRPA 9.02(b) (part).)

4 Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan  
5 of merger may include:

6 (1) amendments to the governing documents of any  
7 surviving organization;

8 (2) provisions relating to an interest exchange,  
9 including a plan of exchange; and

10 (3) any other provisions relating to the merger that  
11 are not required by this chapter. (TBCA 5.01.C; TLLCA 10.02.B;  
12 TNPCA 5.01.B (part), 5.02.B (part); TREITA 23.10(C); TRLPA 2.11(c);  
13 TRPA 9.02(c).)

14 Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) In  
15 this section:

16 (1) "Direct or indirect wholly owned subsidiary"  
17 means, with respect to a domestic entity, another domestic entity,  
18 all of the outstanding voting ownership or membership interests of  
19 which are owned by the domestic entity or by one or more other  
20 domestic entities or non-code organizations, all of the outstanding  
21 voting ownership or membership interests of which are owned by the  
22 domestic entity or one or more other wholly owned domestic entities  
23 or non-code organizations.

24 (2) "Holding company" means a domestic entity that,  
25 from its organization until a merger takes effect, was at all times  
26 a direct or indirect wholly owned subsidiary of the domestic entity  
27 and the ownership or membership interests of which are issued in the

1 merger.

2 (b) A domestic entity may, without owner approval and  
3 pursuant to a plan of merger, restructure the ownership structure  
4 of that entity to create a holding company structure under this  
5 chapter and the provisions of this code under which the entity was  
6 formed. The approval of the owners or members of a domestic entity  
7 of a plan of merger that creates a holding company is not required  
8 if:

9 (1) approval is not otherwise required by the  
10 governing documents of the domestic entity;

11 (2) the domestic entity merges with a direct or  
12 indirect domestic wholly owned entity;

13 (3) after the merger the domestic entity or its  
14 successor is a direct or indirect wholly owned entity of a holding  
15 company;

16 (4) the domestic entity and the direct or indirect  
17 wholly owned entity are the only parties to the merger;

18 (5) each ownership or membership interest of the  
19 domestic entity that is outstanding preceding the merger is  
20 converted in the merger into an ownership or membership interest of  
21 the holding company having the same designations, preferences,  
22 limitations, and relative rights as the ownership or membership  
23 interest held by the owner or member in the domestic entity;

24 (6) the holding company is a domestic entity of the  
25 same organizational form as the merging domestic entity;

26 (7) except as provided by Subsections (c) and (d), the  
27 initial governing documents of the holding company contain

1 provisions identical to the governing documents of the domestic  
2 entity preceding the merger;

3 (8) except as provided by Subsections (c) and (d), the  
4 initial governing documents of the surviving entity contain  
5 provisions identical to the governing documents of the domestic  
6 entity preceding the merger;

7 (9) the governing persons of the domestic entity  
8 become or remain the governing persons of the holding company when  
9 the merger takes effect;

10 (10) the owners or members of the domestic entity will  
11 not recognize gain or loss for United States federal income tax  
12 purposes or any other tax benefit or attribute as determined by the  
13 governing authority of the domestic entity; and

14 (11) the governing authority of the domestic entity  
15 adopts a resolution approving the plan of merger.

16 (c) Subsections (b)(7) and (8) do not require identical  
17 provisions regarding the incorporator or incorporators, the entity  
18 name, the registered office and agent, the initial governing  
19 persons, and the initial subscribers of ownership interests and  
20 provisions contained in any amendment to the certificate as are  
21 necessary to effect a change, exchange, reclassification, or  
22 cancellation of ownership or membership interests, if the change,  
23 exchange, reclassification, or cancellation was in effect  
24 preceding the merger.

25 (d) Notwithstanding Subsection (b)(8):

26 (1) the governing documents of the surviving entity  
27 must require that an act or transaction by or involving the



1 surviving entity that requires for its approval under this code the  
2 approval of the owners or members of the merging domestic entity  
3 must, by specific reference to this section, require the approval  
4 of the owners or members of the holding company, or any successor by  
5 merger, by the same vote as is required by this code and the  
6 governing documents of the surviving entity; and

7 (2) the governing documents of the surviving entity  
8 may change the classes and series of ownership or membership  
9 interests and the number of ownership or membership interests that  
10 the surviving entity is authorized to issue.

11 (e) To the extent the provisions contained in Section 21.606  
12 apply to a domestic entity and its owners or members when a merger  
13 takes effect under this section, those provisions continue to apply  
14 to the holding company and its owners or members immediately after  
15 the merger takes effect as though the holding company were the  
16 domestic entity. All ownership or membership interests of the  
17 holding company acquired in the merger, for purposes of Section  
18 21.606, are considered to have been acquired at the time the  
19 ownership or membership interest of the domestic entity converted  
20 in the merger was acquired. Any owner or member who, preceding the  
21 merger, was not an affiliated owner or member as described by  
22 Section 21.606 does not solely by reason of the merger become an  
23 affiliated owner or member of the holding company.

24 (f) If the name of a holding company immediately following  
25 the effectiveness of a merger under this section is the same as the  
26 name of the domestic entity preceding the merger, the ownership or  
27 membership interests of the holding company into which the

1 ownership or membership interests of the domestic entity are merged  
2 are represented by the certificates, if any, that previously  
3 represented the ownership or membership interests in the domestic  
4 entity.

5 (g) This section shall not apply to partnerships. (TBCA  
6 5.03.H, I (part), J, K.)

7 Sec. 10.006. SHORT FORM MERGER. (a) A parent organization  
8 that owns at least 90 percent of the outstanding ownership or  
9 membership interests of each class and series of each of one or more  
10 subsidiary organizations may merge with one or more of the  
11 subsidiary organizations as provided by this section if:

12 (1) at least one of the parties to the merger is a  
13 domestic entity and each other party is a domestic entity or another  
14 non-code organization organized under the laws of a jurisdiction  
15 that permits a merger of the type authorized by this chapter; and

16 (2) the resulting organization or organizations are  
17 the parent organization, one or more existing subsidiary  
18 organizations, or one or more new organizations.

19 (b) No action by any subsidiary organization that is a  
20 domestic entity is required to approve the merger.

21 (c) If the parent organization will not survive the merger,  
22 a plan of merger must be adopted by action of the parent  
23 organization in the same manner as a plan of merger not governed by  
24 this section or Section 10.005.

25 (d) If the parent organization will survive the merger, the  
26 merger is required to be approved only by a resolution adopted by  
27 the governing authority of the parent organization.

1           (e) Sections 10.001(c)-(e), 10.002(c), 10.003, and  
2 10.007-10.010 apply to a merger approved under Subsection (d),  
3 except that the resolution approving the merger should be  
4 considered the plan of merger for purposes of those sections.

5           (f) The resolution approving the merger under Subsection  
6 (d) must describe:

7                 (1) the basic terms of the merger;

8                 (2) the organizations that are party to the merger;

9 and

10                (3) the organizations that survive the merger.

11           (g) If the parent organization does not own all of the  
12 outstanding ownership or membership interests of each class or  
13 series of ownership or membership interests of each subsidiary  
14 organization that is a party to the merger, the resolution of the  
15 parent organization required by Subsection (d) must describe the  
16 terms of the merger, including the cash or other property,  
17 including ownership or membership interests, obligations, rights  
18 to purchase securities, or other securities of any person or  
19 organization or any combination of the ownership or membership  
20 interests, obligations, rights, or other securities, to be used,  
21 paid, or delivered by the parent organization on surrender of each  
22 ownership or membership interest of the subsidiary organizations  
23 not owned by the parent organization.

24           (h) An entity is not disqualified from effecting a merger  
25 under any other provision of this chapter because it qualifies for a  
26 merger under this section.

27           (i) This section shall not apply if a subsidiary

1 organization that is a party to the merger is a partnership. (TBCA  
2 5.16.A, B (part), C, D, E, F; TLLCA 10.05.A, B (part), C.)

3 Sec. 10.007. EFFECTIVENESS OF MERGER. Except as otherwise  
4 provided by Subchapter B, Chapter 4, a merger takes effect at the  
5 time provided by the plan of merger, except that a merger that  
6 requires a filing under Subchapter D takes effect on the acceptance  
7 of the filing of the certificate of merger by the secretary of state  
8 or county clerk, as appropriate. (TBCA 5.05, 5.16.D; TLLCA  
9 10.03.C; TNPCA 5.05, 5.07.B (part); TREITA 23.50; TRLPA 2.11(f);  
10 TRPA 9.02(f).)

11 Sec. 10.008. EFFECT OF MERGER. (a) When a merger takes  
12 effect:

13 (1) the separate existence of each domestic entity  
14 that is a party to the merger, other than a surviving or new  
15 domestic entity, ceases;

16 (2) all rights, title, and interests to all real  
17 estate and other property owned by each organization that is a party  
18 to the merger is allocated to and vested, subject to any existing  
19 liens or other encumbrances on the property, in one or more of the  
20 surviving or new organizations as provided in the plan of merger  
21 without:

22 (A) reversion or impairment;

23 (B) any further act or deed; or

24 (C) any transfer or assignment having occurred;

25 (3) all liabilities and obligations of each  
26 organization that is a party to the merger are allocated to one or  
27 more of the surviving or new organizations in the manner provided by

1 the plan of merger;

2 (4) each surviving or new domestic organization to  
3 which a liability or obligation is allocated under the plan of  
4 merger is the primary obligor for the liability or obligation, and,  
5 except as otherwise provided by the plan of merger or by law or  
6 contract, no other party to the merger, other than a surviving  
7 domestic entity or non-code organization liable or otherwise  
8 obligated at the time of the merger, and no other new domestic  
9 entity or non-code organization created under the plan of merger is  
10 liable for the debt or other obligation;

11 (5) any proceeding pending by or against any domestic  
12 entity or by or against any non-code organization that is a party to  
13 the merger may be continued as if the merger did not occur, or the  
14 surviving or new domestic entity or entities or the surviving or new  
15 non-code organization or non-code organizations to which the  
16 liability, obligation, asset, or right associated with that  
17 proceeding is allocated to and vested in under the plan of merger  
18 may be substituted in the proceeding;

19 (6) the governing documents of each surviving domestic  
20 entity are amended to the extent provided by the plan of merger;

21 (7) each new filing entity whose certificate of  
22 formation is included in the plan of merger under this chapter, on  
23 meeting any additional requirements, if any, of this code for its  
24 formation, is formed as a domestic entity under this code as  
25 provided by the plan of merger;

26 (8) the ownership or membership interests of each  
27 organization that is a party to the merger and that are to be

1 converted or exchanged, in whole or part, into ownership or  
2 membership interests, obligations, rights to purchase securities,  
3 or other securities of one or more of the surviving or new  
4 organizations, into cash or other property, including ownership or  
5 membership interests, obligations, rights to purchase securities,  
6 or other securities of any organization, or into any combination of  
7 these are converted and exchanged and the former owners or members  
8 who held ownership or membership interests of each domestic entity  
9 that is a party to the merger are entitled only to the rights  
10 provided by the certificate of merger or, if applicable, any rights  
11 to receive the fair value for the ownership or membership interests  
12 previously held by them provided under this code; and

13 (9) notwithstanding Subdivision (4), the surviving or  
14 new organization named in the plan of merger as primarily obligated  
15 to pay the fair value of an ownership or membership interest under  
16 Section 10.003(2) is the primary obligor for that payment and all  
17 other surviving or new organizations are secondarily liable for  
18 that payment.

19 (b) If the plan of merger does not provide for the  
20 allocation and vesting of the right, title, and interest in any  
21 particular real estate or other property or for the allocation of  
22 any liability or obligation of any party to the merger, the  
23 unallocated property is owned in undivided interest by, or the  
24 liability or obligation is the joint and several liability and  
25 obligation of, each of the surviving and new organizations, pro  
26 rata to the total number of surviving and new organizations  
27 resulting from the merger.

1 (c) If a surviving organization in a merger is not a  
2 domestic entity, the surviving organization is considered to have:

3 (1) appointed the secretary of state in this state as  
4 the organization's agent for service of process in a proceeding to  
5 enforce any obligation of a domestic entity that is a party to the  
6 merger; and

7 (2) agreed to promptly pay to the dissenting owners or  
8 members of each domestic entity that is a party to the merger who  
9 have the right of dissent and appraisal under this code the amount,  
10 if any, to which they are entitled under this code.

11 (d) If the surviving organization in a merger is not a  
12 domestic entity, the organization shall register to transact  
13 business in this state if the entity is required to register for  
14 that purpose by another provision of this code. (TBCA 5.01.D,  
15 5.06.A, C, 5.16.B (part); TLLCA 10.04; TNPCA 5.06, 5.07.B (part);  
16 TREITA 23.10(D), 23.60(A), (C); TRLPA 2.11(g) (part); TRPA 9.02(g)  
17 (part).)

18 Sec. 10.009. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP  
19 MERGERS. (a) A partner of a domestic partnership that is a party to  
20 a merger does not become liable as a result of the merger for the  
21 liability or obligation of another person that is a party to the  
22 merger unless the partner consents to becoming personally liable by  
23 action taken in connection with the specific plan of merger  
24 approved by the partner.

25 (b) A partner of a domestic partnership that is a party to a  
26 merger who remains in or enters a partnership is treated as an  
27 incoming partner in the partnership when the merger takes effect

1 for purposes of determining the partner's liability for a debt or  
2 obligation of the partnership or partnerships that are parties to  
3 the merger or to be created in the merger and in which the partner  
4 was not a partner.

5 (c) If a partnership merges with an organization and,  
6 because of the merger, no longer exists, a former partner who  
7 becomes an owner or member of the surviving organization may, until  
8 the first anniversary of the effective date of the merger, bind the  
9 surviving organization to a transaction for which the owner or  
10 member no longer has authority to bind the organization if the  
11 transaction is one in which the actions by the owner or member as a  
12 partner would have bound the partnership before the effective date  
13 of the merger, and the other party to the transaction:

14 (1) does not have actual or constructive notice of the  
15 merger;

16 (2) had done business with the terminated partnership  
17 within one year preceding the effective date of the merger; and

18 (3) reasonably believes that the partner who was  
19 previously an owner or member of the partnership that was merged  
20 into the surviving organization and is now an owner or member of the  
21 surviving organization has the authority to bind the surviving  
22 organization to the transaction at the time of the transaction.

23 (d) If a partnership is formed under a plan of merger, the  
24 existence of the partnership as a partnership begins when the  
25 merger takes effect, and the persons to be partners become partners  
26 at that time.

27 (e) A partner in a domestic partnership that is a party to



1 the merger but does not survive shall be treated as a partner who  
2 withdrew from the nonsurviving domestic partnership as of the  
3 effective date of the merger.

4 (f) The partnership agreement of each domestic partnership  
5 that is a party to the merger must contain provisions that authorize  
6 the merger provided for in the plan of merger adopted by the  
7 partnership.

8 (g) Each domestic partnership that is a party to the merger  
9 must approve the plan of merger in the manner prescribed in its  
10 partnership agreement. (TRLPA 2.01(b) (part), 2.11(a) (part), (g)  
11 (part); TRPA 2.02(d), 9.01(c), 9.02(a) (part), (g) (part).)

12 Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT  
13 CORPORATION MERGERS. (a) A domestic nonprofit corporation may not  
14 merge into another entity if the domestic nonprofit corporation  
15 would, because of the merger, lose or impair its charitable status.

16 (b) One or more domestic or foreign for-profit entities or  
17 non-code organizations may merge into one or more domestic  
18 nonprofit corporations that continue as the surviving entity or  
19 entities.

20 (c) A domestic nonprofit corporation may not merge with a  
21 foreign for-profit entity if the domestic nonprofit corporation  
22 does not continue as the surviving entity.

23 (d) One or more domestic nonprofit corporations and  
24 non-code organizations may merge into one or more foreign nonprofit  
25 entities that continue as the surviving entity or entities. (TNPCA  
26 5.01, 5.02, 5.07.A.)

27 [Sections 10.011-10.050 reserved for expansion]

## SUBCHAPTER B. EXCHANGES OF INTERESTS

1  
2           Sec. 10.051. INTEREST EXCHANGES. (a) For the purpose of  
3 acquiring all of the outstanding ownership or membership interests  
4 of one or more classes or series of one or more domestic entities,  
5 one or more domestic entities or non-code organizations may adopt a  
6 plan of exchange.

7           (b) To make an interest exchange under this section:

8           (1) the governing authority of each domestic entity  
9 the ownership or membership interests of which are to be acquired in  
10 the interest exchange must act on a plan of exchange and, if  
11 otherwise required by this code, the owners or members of the  
12 domestic entity must approve the plan of exchange in the manner  
13 provided by this code; and

14           (2) each acquiring domestic entity must take all  
15 action that may otherwise be required by this code and its governing  
16 documents to effect the exchange.

17           (c) A domestic entity subject to dissenters' rights must  
18 provide the notice required by Section 10.355.

19           (d) If a non-code organization is to acquire ownership or  
20 membership interests in the exchange, each non-code organization  
21 must take all action that is required under the laws of the  
22 organization's jurisdiction of formation and the organization's  
23 governing documents to effect the exchange.

24           (e) If one or more non-code organizations as part of the  
25 plan of exchange are to issue ownership or membership interests,  
26 the issuance of the ownership or membership interests must be  
27 permitted by the laws under which the non-code organizations are

1 incorporated or organized or not inconsistent with those laws.

2 (f) A plan of exchange may not be effected if any owner or  
3 member of a domestic entity that is a party to the interest exchange  
4 will, as a result of the interest exchange, become personally  
5 liable, without the consent of the owner or member, for the  
6 liabilities or obligations of any other person or organization.  
7 (TBCA 5.02.A, D, 5.03.A (part); TLLCA 10.06.A; TREITA 23.20(A),  
8 (D); TRLPA 2.11(h) (part); TRPA 9.03(a) (part).)

9 Sec. 10.052. PLAN OF EXCHANGE: REQUIRED PROVISIONS. (a) A  
10 plan of exchange must include:

11 (1) the name of each domestic entity the ownership or  
12 membership interests of which are to be acquired;

13 (2) the name of each acquiring organization;

14 (3) if there is more than one acquiring organization,  
15 the ownership or membership interests to be acquired by each  
16 organization;

17 (4) the terms and conditions of the exchange; and

18 (5) the manner and basis of exchanging the ownership  
19 or membership interests to be acquired for:

20 (A) ownership or membership interests,  
21 obligations, rights to purchase securities, or other securities of  
22 one or more of the acquiring organizations that is a party to the  
23 plan of exchange;

24 (B) cash;

25 (C) other property, including ownership or  
26 membership interests, obligations, rights to purchase securities,  
27 or other securities of any other person or entity; or

1 (D) any combination of those items.

2 (b) The manner and basis of exchanging an ownership or  
3 membership interest of an owner or member that is exchanged in a  
4 manner or basis different from any other owner or member having  
5 ownership or membership interests of the same class or series must  
6 be included in the plan of exchange in the same manner as provided  
7 by Subsection (a)(5). (TBCA 5.02.B; TREITA 23.20(B).)

8 Sec. 10.053. PLAN OF EXCHANGE: PERMISSIVE PROVISIONS. A  
9 plan of exchange may include any other provisions not required by  
10 Section 10.052 relating to the interest exchange. (TBCA 5.02.C;  
11 TREITA 23.20(C).)

12 Sec. 10.054. EFFECTIVENESS OF EXCHANGE. Except as otherwise  
13 provided by Subchapter B, Chapter 4, an interest exchange takes  
14 effect at the time provided in the plan of exchange or otherwise  
15 agreed to by the parties, except that an interest exchange that  
16 requires a filing under Subchapter D takes effect on the acceptance  
17 of the filing of the certificate of exchange by the secretary of  
18 state or county clerk, as appropriate. (TBCA 5.05; TLLCA 10.06.B  
19 (part); TREITA 23.50; TRLPA 2.11(h) (part); TRPA 9.03(b) (part).)

20 Sec. 10.055. GENERAL EFFECT OF INTEREST EXCHANGE. When an  
21 interest exchange takes effect:

22 (1) the ownership or membership interest of each  
23 acquired organization is exchanged as provided in the plan of  
24 exchange, and the former owners whose interests are exchanged under  
25 the plan of exchange are entitled only to the rights provided in the  
26 certificate of exchange or, if applicable, a right to receive the  
27 fair value for the ownership or membership interests provided under

1 Subchapter H; and

2 (2) the acquiring organization has all rights, title,  
3 and interests with respect to the ownership or membership interest  
4 to be acquired by it subject to the provisions of the certificate of  
5 exchange. (TBCA 5.06.B; TLLCA 10.06.B (part); TREITA 23.60(B);  
6 TRLPA 2.11(h) (part); TRPA 9.03(b) (part).)

7 Sec. 10.056. SPECIAL PROVISIONS APPLYING TO PARTNERSHIPS.

8 To effect an interest exchange:

9 (1) the partnership agreement of each domestic  
10 partnership whose partnership interests are to be acquired pursuant  
11 to the plan of exchange must authorize the partnership interest  
12 exchange adopted by the partnership;

13 (2) each domestic partnership whose partnership  
14 interests are to be acquired under the plan of exchange must approve  
15 the plan of exchange in the manner prescribed by its partnership  
16 agreement; and

17 (3) each acquiring domestic partnership must take all  
18 actions that may be required by its partnership agreement in order  
19 to effect the exchange. (TRLPA 2.11(h) (part); TRPA 9.03(a).)

20 [Sections 10.057-10.100 reserved for expansion]

21 SUBCHAPTER C. CONVERSIONS

22 Sec. 10.101. CONVERSION OF DOMESTIC ENTITIES. (a) A  
23 domestic entity may convert into a different type of domestic  
24 entity or a non-code organization by adopting a plan of conversion.

25 (b) To effect a conversion, the converting entity must act  
26 on and the owners or members of the domestic entity must approve a  
27 plan of conversion in the manner prescribed by this code for the

1 approval of conversions by the domestic entity or, if not  
2 prescribed by this code, in the same manner as prescribed by this  
3 code for the adoption and approval of a plan of merger by the  
4 domestic entity when the domestic entity does not survive the  
5 merger.

6 (c) A domestic entity subject to dissenters' rights must  
7 provide the notice required by Section 10.355.

8 (d) A conversion may not take effect if the conversion is  
9 prohibited by or inconsistent with the laws of the converted  
10 entity's jurisdiction of formation, and the formation,  
11 incorporation, or organization of the converted entity under the  
12 plan of conversion must be effected in compliance with those laws  
13 pursuant to the plan of conversion.

14 (e) At the time a conversion takes effect, each owner of the  
15 converting entity, other than those who receive payment of their  
16 ownership or membership interest under any applicable provisions of  
17 this code relating to dissent and appraisal, has, unless otherwise  
18 agreed to by that owner or member, an ownership or membership  
19 interest in, and is the owner or member of, the converted entity.

20 (f) A domestic entity may not convert under this section if  
21 an owner or member of the domestic entity, as a result of the  
22 conversion, becomes personally liable, without the consent of the  
23 owner or member, for a liability or other obligation of the  
24 converted entity. (TBCA 5.17.A (part); TLLCA 10.08.A (part); TRLPA  
25 2.15(a) (part); TRPA 9.01(a), (b), 9.05(a) (part).)

26 Sec. 10.102. CONVERSION OF NON-CODE ORGANIZATIONS. (a) A  
27 non-code organization may convert into a domestic entity by

1 adopting a plan of conversion as provided by this section.

2 (b) To effect a conversion, the non-code organization must  
3 take any action that may be required for a conversion under the laws  
4 of the organization's jurisdiction of formation and the  
5 organization's governing documents.

6 (c) The conversion must be permitted by the laws under which  
7 the non-code organization is incorporated or organized or by its  
8 governing documents, which may not be inconsistent with the laws of  
9 the jurisdiction in which the non-code organization is incorporated  
10 or organized. (TBCA 5.17.B; TLLCA 10.08.B; TRLPA 2.15(b); TRPA  
11 9.05(b).)

12 Sec. 10.103. PLAN OF CONVERSION: REQUIRED PROVISIONS. (a)  
13 A plan of conversion must include:

14 (1) the name of the converting entity;

15 (2) the name of the converted entity;

16 (3) a statement that the converting entity is  
17 continuing its existence in the organizational form of the  
18 converted entity;

19 (4) a statement of the type of entity that the  
20 converted entity is to be and the converted entity's jurisdiction  
21 of formation;

22 (5) the manner and basis of converting the ownership  
23 or membership interests of the converting entity into ownership or  
24 membership interests of the converted entity;

25 (6) any certificate of formation required to be filed  
26 under this code if the converted entity is a filing entity; and

27 (7) the certificate of formation or similar

1 organizational document of the converted entity if the converted  
2 entity is not a filing entity.

3 (b) An item required by Subsection (a)(6) or (7) may be  
4 included in the plan of conversion by an attachment or exhibit to  
5 the plan. (TBCA 5.17.C; TLLCA 10.08.C; TRLPA 2.15(c); TRPA  
6 9.05(c).)

7 Sec. 10.104. PLAN OF CONVERSION: PERMISSIVE PROVISIONS. A  
8 plan of conversion may include other provisions relating to the  
9 conversion that are not inconsistent with law. (TBCA 5.17.D; TLLCA  
10 10.08.D; TRLPA 2.15(d); TRPA 9.05(d).)

11 Sec. 10.105. EFFECTIVENESS OF CONVERSION. Except as  
12 otherwise provided by Subchapter B, Chapter 4, a conversion takes  
13 effect at the time provided by the plan of conversion, except that a  
14 conversion that requires a filing under Subchapter D takes effect  
15 on the acceptance of the filing of the certificate of conversion by  
16 the filing officer. (TBCA 5.19; TLLCA 10.10; TRLPA 2.15(f); TRPA  
17 9.05(g).)

18 Sec. 10.106. GENERAL EFFECT OF CONVERSION. When a  
19 conversion takes effect:

20 (1) the converting entity continues to exist without  
21 interruption in the organizational form of the converted entity  
22 rather than in the organizational form of the converting entity;

23 (2) all rights, title, and interests to all property  
24 owned by the converting entity continues to be owned, subject to any  
25 existing liens or other encumbrances on the property, by the  
26 converted entity in the new organizational form without:

27 (A) reversion or impairment;



1 (B) further act or deed; or

2 (C) any transfer or assignment having occurred;

3 (3) all liabilities and obligations of the converting  
4 entity continue to be liabilities and obligations of the converted  
5 entity in the new organizational form without impairment or  
6 diminution because of the conversion;

7 (4) the rights of creditors or other parties with  
8 respect to or against the previous owners or members of the  
9 converting entity in their capacities as owners or members in  
10 existence when the conversion takes effect continue to exist as to  
11 those liabilities and obligations and may be enforced by the  
12 creditors and obligees as if a conversion had not occurred;

13 (5) a proceeding pending by or against the converting  
14 entity or by or against any of the converting entity's owners or  
15 members in their capacities as owners or members may be continued by  
16 or against the converted entity in the new organizational form and  
17 by or against the previous owners or members without a need for  
18 substituting a party;

19 (6) the ownership or membership interests of the  
20 converting entity that are to be converted into ownership or  
21 membership interests of the converted entity as provided in the  
22 plan of conversion are converted as provided by the plan, and if the  
23 converting entity is a domestic entity, the former owners or  
24 members of the domestic entity are entitled only to the rights  
25 provided in the plan of conversion or a right of dissent and  
26 appraisal under this code;

27 (7) if, after the conversion takes effect, an owner or

1 member of the converted entity as an owner or member is liable for  
2 the liabilities or obligations of the converted entity, the owner  
3 or member is liable for the liabilities and obligations of the  
4 converting entity that existed before the conversion took effect  
5 only to the extent that the owner or member:

6 (A) agrees in writing to be liable for the  
7 liabilities or obligations;

8 (B) was liable, before the conversion took  
9 effect, for the liabilities or obligations; or

10 (C) by becoming an owner or member of the  
11 converted entity, becomes liable under other applicable law for the  
12 existing liabilities and obligations of the converted entity; and

13 (8) if the converted entity is a non-code  
14 organization, the converted entity is considered to have:

15 (A) appointed the secretary of state in this  
16 state as its agent for service of process in a proceeding to enforce  
17 any obligation or the rights of dissenting owners or members of the  
18 converting domestic entity; and

19 (B) agreed that the converted entity will  
20 promptly pay the dissenting owners or members of the converting  
21 domestic entity the amount, if any, to which they are entitled under  
22 this code. (TBCA 5.20.A (part); TLLCA 10.11; TRLPA 2.15(g); TRPA  
23 9.05(h).)

24 Sec. 10.107. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP  
25 CONVERSIONS. (a) If a partnership is formed under a plan of  
26 conversion under this code, the existence of the partnership as a  
27 partnership begins when the conversion takes effect, and the owners

1 or members designated to become the partners under the plan of  
2 conversion become the partners at that time.

3 (b) The partnership agreement of a domestic partnership  
4 that is converting must contain provisions that authorize the  
5 conversion provided for in the plan of conversion adopted by the  
6 partnership.

7 (c) A domestic partnership that is converting must approve  
8 the plan of conversion in the merger provided in its partnership  
9 agreement. (TRLPA 2.01(b) (part), 2.15(a) (part); TRPA 2.02(d),  
10 9.05(a) (part).)

11 Sec. 10.108. SPECIAL PROVISIONS APPLYING TO NONPROFIT  
12 CORPORATION CONVERSIONS. A domestic nonprofit corporation may not  
13 convert into a for-profit entity. (New.)

14 [Sections 10.109-10.150 reserved for expansion]

15 SUBCHAPTER D. CERTIFICATE OF MERGER, EXCHANGE,  
16 OR CONVERSION

17 Sec. 10.151. CERTIFICATE OF MERGER AND EXCHANGE. (a) After  
18 approval of a plan of merger or a plan of exchange as provided by  
19 this code, a certificate of merger, which may also include an  
20 exchange, or a certificate of exchange, as applicable, must be  
21 filed for a merger or interest exchange to become effective if:

22 (1) for a merger:

23 (A) any domestic entity that is a party to the  
24 merger is a filing entity; or

25 (B) any domestic entity to be created under the  
26 plan of merger is a filing entity; or

27 (2) for an exchange, an ownership or membership

1 interest in any filing entity is to be acquired in the interest  
2 exchange.

3 (b) If a certificate of merger or exchange is required to be  
4 filed in connection with an interest exchange or a merger, other  
5 than a merger under Section 10.006, the certificate must be signed  
6 on behalf of each domestic entity and non-code organization that is  
7 a party to the merger or exchange by an officer or other authorized  
8 representative and must include:

9 (1) the plan of merger or exchange or a statement  
10 certifying:

11 (A) the name of each domestic entity or non-code  
12 organization that is a party to the merger or exchange;

13 (B) the name of each domestic entity or non-code  
14 organization that is to be created by the plan of merger or  
15 exchange;

16 (C) the name of the jurisdiction in which each  
17 domestic entity or non-code organization named under Paragraph (A)  
18 or (B) is incorporated or organized;

19 (D) for a merger, the amendments or changes to  
20 the certificate of formation of each filing entity that is a party  
21 to the merger, or if no amendments are desired to be effected by the  
22 merger, a statement to that effect;

23 (E) that the certificate of formation of each new  
24 filing entity to be created under the plan of merger or exchange is  
25 being filed with the certificate of merger or exchange;

26 (F) that a signed plan of merger or exchange is on  
27 file at the principal place of business of each surviving,

1 acquiring, or new domestic entity or non-code organization, and the  
2 address of each principal place of business; and

3 (G) that a copy of the plan of merger or exchange  
4 will be on written request furnished without cost by each  
5 surviving, acquiring, or new domestic entity or non-code  
6 organization to any owner or member of any domestic entity that is a  
7 party to or created by the plan of merger or exchange and, for a  
8 merger with multiple surviving domestic entities or non-code  
9 organizations, to any creditor or obligee of the parties to the  
10 merger at the time of the merger if a liability or obligation is  
11 then outstanding;

12 (2) if approval of the owners or members of any  
13 domestic entity that was a party to the plan of merger or exchange  
14 is not required by this code, a statement to that effect; and

15 (3) a statement that the plan of merger or exchange has  
16 been approved as required by the laws of the jurisdiction of  
17 formation of each organization that is a party to the merger or  
18 exchange and by the governing documents of those organizations.

19 (c) A certificate of merger may also constitute a  
20 certificate of exchange if it contains the information required for  
21 a certificate of exchange. (TBCA 5.04.A; TLLCA 10.03.A (part), B,  
22 10.06.A, B (part); TNPCA 5.04.A; TREITA 23.40(A); TRLPA 2.11(d)  
23 (part), (e), (h) (part); TRPA 9.02(d), 9.03(b) (part).)

24 Sec. 10.152. CERTIFICATE OF MERGER: SHORT FORM MERGER. (a)  
25 The certificate of merger for a merger under Section 10.006 is  
26 required to be signed only by an officer or other authorized  
27 representative of the parent organization described by that

1 section.

2 (b) Except as provided by Subsection (c), the certificate of  
3 merger must include:

4 (1) the name of the parent organization, the name of  
5 each subsidiary organization that is a party to the merger, and the  
6 jurisdiction of formation of each named organization;

7 (2) the number of outstanding ownership interests of  
8 each class or series of each subsidiary organization and the number  
9 and percentage of ownership interests of each class or series owned  
10 by the parent organization;

11 (3) a copy of the resolution of merger adopted by the  
12 governing authority of the parent organization authorizing the  
13 merger and the date of the adoption of the resolution;

14 (4) a statement that the resolution has been approved  
15 as required by the laws of the jurisdiction of formation of the  
16 parent organization and by its governing documents; and

17 (5) if any surviving organization is not a domestic  
18 entity, the address, including street number, if any, of its  
19 registered or principal office in the organization's jurisdiction  
20 of formation.

21 (c) If a plan of merger is required to be adopted by action  
22 of the parent organization under Section 10.006(c), the certificate  
23 of merger must include the information required by Section  
24 10.151(b). (TBCA 5.16.B; TLLCA 10.05.B.)

25 Sec. 10.153. FILING OF CERTIFICATE OF MERGER OR EXCHANGE.

26 (a) If a certificate of merger or exchange is required to be filed,  
27 the certificate of merger or exchange must be filed in accordance

1 with Chapter 4. The certificate of formation of each filing entity  
2 that is to be formed under a plan of merger must also be filed with  
3 the certificate of merger in accordance with Chapter 4. Except as  
4 provided by this section, the certificate must be filed with the  
5 secretary of state.

6 (b) If a domestic real estate investment trust is a party to  
7 the merger or if an ownership interest in a domestic real estate  
8 investment trust is to be acquired in the interest exchange, the  
9 certificate of merger or exchange must be filed in accordance with  
10 Chapter 4 with the county clerk of the county in which the domestic  
11 real estate investment trust's principal place of business in this  
12 state is located.

13 (c) If a domestic real estate investment trust is to be  
14 created under the plan of merger, the certificate of formation of  
15 the domestic real estate investment trust must also be filed with  
16 the certificate of merger in accordance with Chapter 4 with the  
17 county clerk of the county in which the domestic real estate  
18 investment trust's principal place of business in this state is  
19 located. (TBCA 5.04.B, 5.16.C; TLLCA 10.03.B; TNPCA 5.04.B; TREITA  
20 23.40(B); TRLPA 2.11(e); TRPA 9.02(e).)

21 Sec. 10.154. CERTIFICATE OF CONVERSION. (a) After approval  
22 of a plan of conversion as provided by this code, a certificate of  
23 conversion must be filed for the conversion to become effective if:

24 (1) any domestic entity that is a party to the  
25 conversion is a filing entity; or

26 (2) any domestic entity to be created under the plan of  
27 conversion is a filing entity.

1           (b) If a certificate of conversion is required to be filed  
2 in connection with a conversion, the certificate must be signed on  
3 behalf of the converting entity and must include:

4           (1) the plan of conversion or a statement certifying  
5 the following:

6           (A) the name and jurisdiction of organization of  
7 the converting entity;

8           (B) the organizational form of the converting  
9 entity;

10           (C) that a signed plan of conversion is on file at  
11 the principal place of business of the converting entity, and the  
12 address of the principal place of business;

13           (D) that a signed plan of conversion will be on  
14 file after the conversion at the principal place of business of the  
15 converted entity, and the address of the principal place of  
16 business; and

17           (E) that a copy of the plan of conversion will be  
18 on written request furnished without cost by the converting entity  
19 before the conversion or by the converted entity after the  
20 conversion to any owner or member of the converting entity or the  
21 converted entity; and

22           (2) a statement that the plan of conversion has been  
23 approved as required by the laws of the jurisdiction of formation  
24 and the governing documents of the converting entity. (TBCA  
25 5.18.A; TLLCA 10.09.A; TRLPA 2.15(e); TRPA 9.05(e) (part).)

26           Sec. 10.155. FILING OF CERTIFICATE OF CONVERSION. (a) If a  
27 certificate of conversion is required to be filed, the certificate



1 of conversion must be filed in accordance with Chapter 4. If the  
2 converted entity is a filing entity, the certificate of formation  
3 of the filing entity must also be filed with the certificate of  
4 conversion in accordance with Chapter 4. Except as provided by this  
5 section, the certificate must be filed with the secretary of state.

6 (b) If the converting entity is a domestic real estate  
7 investment trust, the certificate of conversion must be filed in  
8 accordance with Chapter 4 with the county clerk of the county in  
9 which the converting entity's principal place of business in this  
10 state is located.

11 (c) If the converted entity is a domestic real estate  
12 investment trust, the certificate of formation of the converted  
13 entity must also be filed with the certificate of conversion in  
14 accordance with Chapter 4 with the county clerk of the county in  
15 which the converted entity's principal place of business in this  
16 state is located. (TBCA 5.18.B; TLLCA 10.09.B; TRLPA 2.15(f); TRPA  
17 9.05(e) (part).)

18 Sec. 10.156. ACCEPTANCE OF CERTIFICATE FOR FILING. The  
19 filing officer may not accept a certificate of merger, exchange, or  
20 conversion for filing if:

21 (1) the filing officer finds that the certificate of  
22 merger, exchange, or conversion does not conform to law; or

23 (2) the required franchise taxes have not been paid or  
24 the certificate of merger, exchange, or conversion does not provide  
25 that one or more of the surviving, new, or acquiring organizations  
26 or the converted entity is liable for the payment of the required  
27 franchise taxes. (TBCA 5.04.C (part), 5.18.C (part); TLLCA 10.03.B

1 (part), 10.09.C (part); TNPCA 5.04.B (part); TRLPA 2.11(e) (part);  
2 TRPA 9.02(e) (part), 9.05(f) (part).)

3 [Sections 10.157-10.200 reserved for expansion]

4 SUBCHAPTER E. ABANDONMENT OF MERGER, EXCHANGE, OR CONVERSION

5 Sec. 10.201. ABANDONMENT OF PLAN OF MERGER, EXCHANGE, OR  
6 CONVERSION. After a merger, interest exchange, or conversion is  
7 approved as provided by this code, and at any time before the  
8 merger, interest exchange, or conversion takes effect, the plan of  
9 merger, interest exchange, or conversion may be abandoned, subject  
10 to any contractual rights, by any of the domestic entities that are  
11 a party to the merger, interest exchange, or conversion, without  
12 action by the owners or members, under the procedures provided by  
13 the plan of merger, exchange, or conversion or, if no abandonment  
14 procedures are provided, in the manner determined by the governing  
15 authority. (TBCA 5.03.L (part), 5.17.E (part); TNPCA 5.03.B; TREITA  
16 23.30(I) (part).)

17 Sec. 10.202. ABANDONMENT AFTER FILING. (a) If a  
18 certificate of merger, exchange, or conversion has been filed, the  
19 merger, interest exchange, or conversion may be abandoned before  
20 its effectiveness in accordance with Sections 4.057 and 10.201.

21 (b) A filing of a certificate of abandonment under Section  
22 4.057 is not required for the abandonment of a merger, interest  
23 exchange, or conversion if no filing is required under Subchapter D  
24 to make the merger, interest exchange, or conversion effective.  
25 (TBCA 5.03.L (part), 5.17.E (part); TLLCA 9.03.F (part); TREITA  
26 23.30(I) (part); TRLPA 2.12.F (part).)

27 [Sections 10.203-10.250 reserved for expansion]

## 1           SUBCHAPTER F. PROPERTY TRANSFERS AND DISPOSITIONS

2           Sec. 10.251. GENERAL POWER OF DOMESTIC ENTITY TO SELL,  
3 LEASE, OR CONVEY PROPERTY. (a) Subject to any approval required by  
4 this code or the governing documents of the domestic entity, a  
5 domestic entity may transfer and convey by sale, lease, assignment,  
6 or another method an interest in property of the entity, including  
7 real property. The transfer and conveyance may:

8           (1) be made with or without the goodwill of the entity;

9           (2) be made on any terms and conditions and for any  
10 consideration, which may consist wholly or partly of money or other  
11 property, including an ownership interest in a domestic entity or  
12 non-code organization; and

13           (3) be evidenced by a deed, assignment, or other  
14 instrument of transfer or conveyance, with or without the seal of  
15 the entity.

16           (b) Subject to any approval required by this code or the  
17 governing documents of the domestic entity, a domestic entity may  
18 grant a pledge, mortgage, deed of trust, or trust indenture with  
19 respect to an interest in property of the entity, including real  
20 property, with or without the seal of the entity. (TBCA 5.08  
21 (part), 5.09.A; TNPCA 5.08 (part); TREITA 24.10(A), (C) (part).)

22           Sec. 10.252. NO APPROVAL REQUIRED FOR CERTAIN DISPOSITIONS  
23 OF PROPERTY. Except as otherwise provided by this code, the  
24 governing documents of the domestic entity, or specific limitations  
25 established by the governing authority, a sale, lease, assignment,  
26 conveyance, pledge, mortgage, deed of trust, trust indenture, or  
27 other transfer of an interest in real property or other property

1 made by a domestic entity does not require the approval of the  
2 members or owners of the entity. (TBCA 5.08 (part), 5.09.A (part);  
3 TNPCA 5.08 (part), 5.09 (part); TREITA 24.10(A).)

4       Sec. 10.253. RECORDING INSTRUMENT CONVEYING REAL PROPERTY  
5 OF DOMESTIC ENTITY. (a) A deed or other instrument executed by a  
6 domestic entity that conveys an interest in real property may be  
7 recorded in the same manner and with the same effect as other  
8 similar instruments if the instrument is signed and acknowledged  
9 by:

10               (1) an officer, authorized attorney-in-fact, or other  
11 authorized person of the entity; or

12               (2) in the case of a partnership or limited liability  
13 company, a governing person of the entity.

14       (b) A deed or other instrument executed by a domestic entity  
15 that conveys an interest in real property and that is recorded and  
16 signed by an officer, authorized attorney-in-fact, or other  
17 authorized person of the entity constitutes prima facie evidence  
18 that the sale or conveyance that is the subject of the instrument  
19 was authorized under this code and the governing documents of the  
20 entity. (TBCA 5.08; TLLCA 2.11; TNPCA 5.08; TREITA 24.10(C).)

21       Sec. 10.254. DISPOSITION OF PROPERTY NOT A MERGER OR  
22 CONVERSION; LIABILITY. (a) A disposition of all or part of the  
23 property of a domestic entity, regardless of whether the  
24 disposition requires the approval of the entity's owners or  
25 members, is not a merger or conversion for any purpose.

26       (b) Except as otherwise expressly provided by another law, a  
27 person acquiring property described by this section may not be held

1 responsible or liable for a liability or obligation of the  
2 transferring domestic entity that is not expressly assumed by the  
3 person. (TBCA 5.10.B; TREITA 24.20(B).)

4 [Sections 10.255-10.300 reserved for expansion]

5 SUBCHAPTER G. BANKRUPTCY REORGANIZATION

6 Sec. 10.301. REORGANIZATION UNDER BANKRUPTCY AND SIMILAR  
7 LAWS. (a) A trustee appointed for a domestic entity that is being  
8 reorganized under a federal statute, the designated officers of a  
9 domestic entity being reorganized under a federal statute, or any  
10 other individual designated by a court having jurisdiction of a  
11 domestic entity being reorganized under a federal statute to act on  
12 behalf of the domestic entity may, without action by or notice to  
13 the domestic entity's governing authority, owners, or members, in  
14 order to carry out a plan of reorganization ordered by a court under  
15 the federal statute:

16 (1) amend or restate the domestic entity's certificate  
17 of formation if the certificate of formation after amendment or  
18 restatement contains only provisions required or permitted to be  
19 contained in the certificate of formation;

20 (2) merge or exchange an interest with one or more  
21 domestic entities or non-code organizations under a plan of merger  
22 or exchange having any provision required or permitted by Sections  
23 10.002, 10.003, 10.004, 10.005, 10.052, and 10.053;

24 (3) change the location of the domestic entity's  
25 registered office, change its registered agent, and remove or  
26 appoint any agent to receive service of process;

27 (4) alter, amend, or repeal the domestic entity's

1 governing documents other than filing instruments;

2 (5) constitute or reconstitute and classify or  
3 reclassify the domestic entity's governing authority and name,  
4 constitute, or appoint managerial officials in place of or in  
5 addition to all or some of the managerial officials;

6 (6) sell, lease, exchange, or otherwise dispose of  
7 all, or substantially all, of the domestic entity's property and  
8 assets;

9 (7) authorize and fix the terms, manner, and  
10 conditions of the issuance of bonds, debentures, or other  
11 obligations, regardless of whether the obligation is convertible  
12 into ownership interests of any class or bearing warrants or other  
13 evidences of optional rights to purchase or subscribe for any  
14 ownership interests of any class;

15 (8) wind up and terminate the entity's existence; or

16 (9) effect a conversion.

17 (b) An action taken under Subsection (a)(4) or (5) takes  
18 effect on entry of the order approving the plan of reorganization or  
19 on another effective date as may be specified, without further  
20 action of the domestic entity, as and to the extent provided by the  
21 plan of reorganization or the order approving the plan of  
22 reorganization. (TBCA 4.14.A; TLLCA 8.12.A; TREITA 26.10(A), (B);  
23 TRLPA 2.06(a).)

24 Sec. 10.302. SIGNING OF DOCUMENTS. A trustee appointed for  
25 a domestic entity being reorganized under a federal statute, the  
26 designated officers of a domestic entity being reorganized under a  
27 federal statute, or any other individual designated by a court

1 having jurisdiction of a domestic entity being reorganized under a  
2 federal statute may sign on behalf of a domestic entity that is  
3 being reorganized:

4 (1) a certificate of amendment or restated certificate  
5 of formation containing:

6 (A) the name of the domestic entity;

7 (B) each amendment or the restatement approved by  
8 the court;

9 (C) the date of the court's order approving the  
10 certificate of amendment or the restatement;

11 (D) the name of the court having jurisdiction,  
12 file name, and case number of the reorganization case in which the  
13 order was entered; and

14 (E) a statement that the court had jurisdiction  
15 of the case under a federal statute;

16 (2) a certificate of merger or exchange containing:

17 (A) the name of the domestic entity;

18 (B) the part of the plan of reorganization that  
19 contains the plan of merger or exchange approved by the court, which  
20 must include the information required by Section 10.151(b) or  
21 10.152, as applicable, but which is not required to include the  
22 resolution of the governing authority referred to in Section  
23 10.152;

24 (C) the date of the court's order approving the  
25 plan of merger or consolidation;

26 (D) the name of the court having jurisdiction,  
27 file name, and case number of the reorganization case in which the

1 order or decree was entered; and

2 (E) a statement that the court had jurisdiction  
3 of the case under a federal statute;

4 (3) a certificate of termination containing:

5 (A) the name of the domestic entity;

6 (B) the information required by Sections  
7 11.101(c)(1)-(4);

8 (C) the date of the court's order approving the  
9 certificate of termination;

10 (D) a statement that the obligations of the  
11 domestic entity, including debts and liabilities, have been paid or  
12 discharged as provided by the plan of reorganization and the  
13 remaining property and assets of the domestic entity have been  
14 distributed as provided by the plan of reorganization;

15 (E) the name of the court having jurisdiction,  
16 file name, and case number of the reorganization case in which the  
17 order or decree was entered; and

18 (F) a statement that the court had jurisdiction  
19 of the case under a federal statute;

20 (4) a statement of change of registered office or  
21 registered agent, or both, containing:

22 (A) the name of the domestic entity;

23 (B) the information required by Section  
24 5.202(b), as applicable, but not the information included in the  
25 statement referred to in Section 5.202(b)(6);

26 (C) the date of the court's order approving the  
27 statement of change of registered office or registered agent, or



1 both;

2 (D) the name of the court having jurisdiction,  
3 file name, and case number of the reorganization case in which the  
4 order or decree was entered; and

5 (E) a statement that the court had jurisdiction  
6 of the case under a federal statute; or

7 (5) a certificate of conversion containing:

8 (A) the name of the domestic entity;

9 (B) the part of the plan of reorganization that  
10 contains the plan of conversion approved by the court, which must  
11 include the information required by Section 10.103;

12 (C) the date of the court's order or decree  
13 approving the plan of conversion;

14 (D) the name of the court having jurisdiction,  
15 file name, and case number of the reorganization case in which the  
16 order was entered; and

17 (E) a statement that the court had jurisdiction  
18 of the case under a federal statute. (TBCA 4.14.B; TREITA 26.10(C),  
19 (D); TRLPA 2.06(b).)

20 Sec. 10.303. REORGANIZATION WITH OTHER ENTITIES. If a  
21 domestic entity or non-code organization that is not being  
22 reorganized under a federal statute merges or exchanges an interest  
23 with a domestic entity that is being reorganized under a plan of  
24 reorganization under a federal statute:

25 (1) Subchapters A, B, D, E, and H apply to the domestic  
26 entity or non-code organization that is not being reorganized to  
27 the same extent those subchapters would apply if the domestic

1 entity or non-code organization were merging or engaging in an  
2 interest exchange with a domestic entity that is not being  
3 reorganized, except as otherwise provided by the plan of  
4 reorganization ordered by a court under the federal statute;

5 (2) Subchapter H applies to a subsidiary organization  
6 that is not being reorganized to the same extent that subchapter  
7 would apply if the subsidiary organization were merging with a  
8 parent organization that is not being reorganized;

9 (3) on the receipt of all required authorization for  
10 all action required by this code for each domestic entity that is a  
11 party to the plan of merger or exchange that is not being  
12 reorganized and all action by each domestic entity or non-code  
13 organization that is a party to the plan of merger or exchange  
14 required by the laws of the entity's or organization's jurisdiction  
15 of formation and governing documents, a certificate of merger or  
16 exchange shall be signed by each domestic entity or non-code  
17 organization that is a party to the merger or exchange other than  
18 the domestic entity that is being reorganized as provided by  
19 Section 10.151 and on behalf of the domestic entity that is being  
20 reorganized by the persons specified in Section 10.302;

21 (4) the certificate of merger or exchange must contain  
22 the information required by Section 10.302(2);

23 (5) the certificate of merger or exchange must be  
24 filed in the manner provided by Section 10.153; and

25 (6) on the acceptance for filing of the certificate of  
26 merger or exchange in accordance with Subchapter D, the merger or  
27 interest exchange, when effective, has the same effect as if it had

1 been adopted by unanimous action of the governing authority and  
2 owners or members of the domestic entity being reorganized, and the  
3 effectiveness of the merger or interest exchange is determined as  
4 provided by Section 10.007 or 10.054. (TBCA 4.14.C; TREITA  
5 26.10(D); TRLPA 2.06(c), (d).)

6 Sec. 10.304. RIGHT OF DISSENT AND APPRAISAL EXCLUDED. An  
7 owner or member of a domestic entity subject to dissenters' rights  
8 being reorganized under a federal statute does not have a right to  
9 dissent and appraisal under this code except as provided by the plan  
10 of reorganization. (TBCA 4.14.D; TREITA 26.10(E).)

11 Sec. 10.305. AFTER FINAL DECREE. This subchapter does not  
12 apply after the entry of a final decree in a reorganization case  
13 under a federal statute even though the court that renders the  
14 decree may retain jurisdiction of the case for limited purposes  
15 unrelated to consummation of the plan of reorganization. (TBCA  
16 4.14.E; TREITA 26.10(F); TRLPA 2.06(e).)

17 Sec. 10.306. CHAPTER CUMULATIVE OF OTHER CHANGES. This  
18 chapter does not preclude other changes in a domestic entity or its  
19 ownership or membership interests or securities by a plan of  
20 reorganization ordered by a court under a federal statute. (TBCA  
21 4.14.F; TREITA 26.10(G); TRLPA 2.06(f).)

22 [Sections 10.307-10.350 reserved for expansion]

23 SUBCHAPTER H. RIGHTS OF DISSENTING OWNERS

24 Sec. 10.351. APPLICABILITY OF SUBCHAPTER. (a) This  
25 subchapter does not apply to a fundamental business transaction of  
26 a domestic entity if, immediately before the effective date of the  
27 fundamental business transaction, all of the ownership interests of

1 the entity otherwise entitled to rights to dissent and appraisal  
2 under this code are held by one owner or only by the owners who  
3 approved the fundamental business transaction.

4 (b) This subchapter applies only to a "domestic entity  
5 subject to dissenters' rights," as defined in Section 1.002. That  
6 term includes a domestic for-profit corporation, professional  
7 corporation, professional association, and real estate investment  
8 trust. Except as provided in Subsection (c), that term does not  
9 include a partnership or limited liability company.

10 (c) The governing documents of a partnership or a limited  
11 liability company may provide that its owners are entitled to the  
12 rights of dissent and appraisal provided by this subchapter. (New.)

13 Sec. 10.352. DEFINITIONS. In this subchapter:

14 (1) "Dissenting owner" means an owner of an ownership  
15 interest in a domestic entity subject to dissenters' rights who:

16 (A) provides notice under Section 10.356; and

17 (B) complies with the requirements for  
18 perfecting that owner's right to dissent under this subchapter.

19 (2) "Responsible organization" means:

20 (A) the organization responsible for:

21 (i) the provision of notices under this  
22 subchapter; and

23 (ii) the primary obligation of paying the  
24 fair value for an ownership interest held by a dissenting owner;

25 (B) with respect to a merger or conversion:

26 (i) for matters occurring before the merger  
27 or conversion, the organization that is merging or converting; and

1                   (ii) for matters occurring after the merger  
2 or conversion, the surviving or new organization that is primarily  
3 obligated for the payment of the fair value of the dissenting  
4 owner's ownership interest in the merger or conversion;

5                   (C) with respect to an interest exchange, the  
6 organization the ownership interests of which are being acquired in  
7 the interest exchange; and

8                   (D) with respect to the sale of all or  
9 substantially all of the assets of an organization, the  
10 organization the assets of which are to be transferred by sale or in  
11 another manner. (New.)

12           Sec. 10.353. FORM AND VALIDITY OF NOTICE. (a) Notice  
13 required under this subchapter:

14                   (1) must be in writing; and

15                   (2) may be mailed, hand-delivered, or delivered by  
16 courier or electronic transmission.

17           (b) Failure to provide notice as required by this subchapter  
18 does not invalidate any action taken. (New.)

19           Sec. 10.354. RIGHTS OF DISSENT AND APPRAISAL. (a) Subject  
20 to Subsection (b), an owner of an ownership interest in a domestic  
21 entity subject to dissenters' rights is entitled to:

22                   (1) dissent from:

23                   (A) a plan of merger to which the domestic entity  
24 is a party if owner approval is required by this code and the owner  
25 owns in the domestic entity an ownership interest that was entitled  
26 to vote on the plan of merger;

27                   (B) a sale of all or substantially all of the

1 assets of the domestic entity if owner approval is required by this  
2 code and the owner owns in the domestic entity an ownership interest  
3 that was entitled to vote on the sale;

4 (C) a plan of exchange in which the ownership  
5 interest of the owner is to be acquired;

6 (D) a plan of conversion in which the domestic  
7 entity is the converting entity if owner approval is required by  
8 this code and the owner owns in the domestic entity an ownership  
9 interest that was entitled to vote on the plan of conversion; or

10 (E) a merger effected under Section 10.006 in  
11 which:

12 (i) the owner is entitled to vote on the  
13 merger; or

14 (ii) the ownership interest of the owner is  
15 converted or exchanged; and

16 (2) subject to compliance with the procedures set  
17 forth in this subchapter, obtain the fair value of that ownership  
18 interest through an appraisal.

19 (b) Notwithstanding Subsection (a), subject to Subsection  
20 (c), an owner may not dissent from a plan of merger or conversion in  
21 which there is a single surviving or new domestic entity or non-code  
22 organization, or from a plan of exchange, if:

23 (1) the ownership interest held by the owner is part of  
24 a class or series of ownership interests that are, on the record  
25 date set for purposes of determining which owners are entitled to  
26 vote on the plan of merger, conversion, or exchange, as  
27 appropriate:

1 (A) listed on a national securities exchange or a  
2 similar system;

3 (B) listed on the Nasdaq Stock Market or a  
4 successor quotation system;

5 (C) designated as a national market security on  
6 an interdealer quotation system by the National Association of  
7 Securities Dealers, Inc., or a successor system; or

8 (D) held of record by at least 2,000 owners;

9 (2) the owner is not required by the terms of the plan  
10 of merger, conversion, or exchange, as appropriate, to accept for  
11 the owner's ownership interest any consideration that is different  
12 from the consideration to be provided to any other holder of an  
13 ownership interest of the same class or series as the ownership  
14 interest held by the owner, other than cash instead of fractional  
15 shares or interests the owner would otherwise be entitled to  
16 receive; and

17 (3) the owner is not required by the terms of the plan  
18 of merger, conversion, or exchange, as appropriate, to accept for  
19 the owner's ownership interest any consideration other than:

20 (A) ownership interests of a domestic entity or  
21 non-code organization of the same general organizational type that,  
22 immediately after the effective date of the merger, conversion, or  
23 exchange, as appropriate, will be part of a class or series of  
24 ownership interests that are:

25 (i) listed on a national securities  
26 exchange or authorized for listing on the exchange on official  
27 notice of issuance;

1 (ii) approved for quotation as a national  
2 market security on an interdealer quotation system by the National  
3 Association of Securities Dealers, Inc., or a successor entity; or

4 (iii) held of record by at least 2,000  
5 owners;

6 (B) cash instead of fractional ownership  
7 interests the owner would otherwise be entitled to receive; or

8 (C) any combination of the ownership interests  
9 and cash described by Paragraphs (A) and (B).

10 (c) Subsection (b) shall not apply to a domestic entity that  
11 is a subsidiary with respect to a merger under Section 10.006. (TBCA  
12 5.11, 5.16.E (part), 5.20.A (part); TREITA 25.10.)

13 Sec. 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL. (a)  
14 A domestic entity subject to dissenters' rights that takes or  
15 proposes to take an action regarding which an owner has a right to  
16 dissent and obtain an appraisal under Section 10.354 shall notify  
17 each affected owner of the owner's rights under that section if:

18 (1) the action or proposed action is submitted to a  
19 vote of the owners at a meeting; or

20 (2) approval of the action or proposed action is  
21 obtained by written consent of the owners instead of being  
22 submitted to a vote of the owners.

23 (b) If a parent organization effects a merger under Section  
24 10.006 and a subsidiary organization that is a party to the merger  
25 is a domestic entity subject to dissenters' rights, the responsible  
26 organization shall notify the owners of that subsidiary  
27 organization who have a right to dissent to the merger under Section



1 10.354 of their rights under this subchapter not later than the 10th  
2 day after the effective date of the merger. The notice must also  
3 include a copy of the certificate of merger and a statement that the  
4 merger has become effective.

5 (c) A notice required to be provided under Subsection (a) or  
6 (b) must:

7 (1) be accompanied by a copy of this subchapter; and

8 (2) advise the owner of the location of the  
9 responsible organization's principal executive offices to which a  
10 notice required under Section 10.356(b)(2) may be provided.

11 (d) In addition to the requirements prescribed by  
12 Subsection (c), a notice required to be provided under Subsection  
13 (a)(1) must accompany the notice of the meeting to consider the  
14 action, and a notice required under Subsection (a)(2) must be  
15 provided to:

16 (1) each owner who consents in writing to the action  
17 before the owner delivers the written consent; and

18 (2) each owner who is entitled to vote on the action  
19 and does not consent in writing to the action before the 11th day  
20 after the date the action takes effect.

21 (e) Not later than the 10th day after the date an action  
22 described by Subsection (a)(1) takes effect, the responsible  
23 organization shall give notice that the action has been effected to  
24 each owner who voted against the action and sent notice under  
25 Section 10.356(b)(2). (TBCA 5.03.D, 5.12.A (part), 5.16.E (part);  
26 TREITA 23.30(D), 25.20(A) (part).)

27 Sec. 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS;

1 PERFECTION OF RIGHT OF DISSENT AND APPRAISAL. (a) An owner of an  
2 ownership interest of a domestic entity subject to dissenters'  
3 rights who has the right to dissent and appraisal from any of the  
4 actions referred to in Section 10.354 may exercise that right to  
5 dissent and appraisal only by complying with the procedures  
6 specified in this subchapter. An owner's right of dissent and  
7 appraisal under Section 10.354 may be exercised by an owner only  
8 with respect to an ownership interest that is not voted in favor of  
9 the action.

10 (b) To perfect the owner's rights of dissent and appraisal  
11 under Section 10.354, an owner:

12 (1) with respect to the ownership interest for which  
13 the rights of dissent and appraisal are sought:

14 (A) must vote against the action if the owner is  
15 entitled to vote on the action and the action is approved at a  
16 meeting of the owners; and

17 (B) may not consent to the action if the action is  
18 approved by written consent; and

19 (2) must give to the responsible organization a notice  
20 dissenting to the action that:

21 (A) is addressed to the president and secretary  
22 of the responsible organization;

23 (B) demands payment of the fair value of the  
24 ownership interests for which the rights of dissent and appraisal  
25 are sought;

26 (C) provides to the responsible organization an  
27 address to which a notice relating to the dissent and appraisal

1 procedures under this subchapter may be sent;

2 (D) states the number and class of the ownership  
3 interests of the domestic entity owned by the owner and the fair  
4 value of the ownership interests as estimated by the owner; and

5 (E) is delivered to the responsible organization  
6 at its principal executive offices at the following time:

7 (i) before the action is considered for  
8 approval, if the action is to be submitted to a vote of the owners at  
9 a meeting;

10 (ii) not later than the 20th day after the  
11 date the responsible organization sends to the owner a notice that  
12 the action was approved by the requisite vote of the owners, if the  
13 action is to be undertaken on the written consent of the owners; or

14 (iii) not later than the 20th day after the  
15 date the responsible organization sends to the owner a notice that  
16 the merger was effected, if the action is a merger effected under  
17 Section 10.006.

18 (c) An owner who does not make a demand within the period  
19 required by Subsection (b)(2)(E) is bound by the action and is not  
20 entitled to exercise the rights of dissent and appraisal under  
21 Section 10.354.

22 (d) Not later than the 20th day after the date an owner makes  
23 a demand under this section, the owner must submit to the  
24 responsible organization any certificates representing the  
25 ownership interest to which the demand relates for purposes of  
26 making a notation on the certificates that a demand for the payment  
27 of the fair value of an ownership interest has been made under this

1 section. An owner's failure to submit the certificates within the  
2 required period has the effect of terminating, at the option of the  
3 responsible organization, the owner's rights to dissent and  
4 appraisal under Section 10.354 unless a court, for good cause  
5 shown, directs otherwise.

6 (e) If a domestic entity and responsible organization  
7 satisfy the requirements of this subchapter relating to the rights  
8 of owners of ownership interests in the entity to dissent to an  
9 action and seek appraisal of those ownership interests, an owner of  
10 an ownership interest who fails to perfect that owner's right of  
11 dissent in accordance with this subchapter may not bring suit to  
12 recover the value of the ownership interest or money damages  
13 relating to the action. (TBCA 5.12.A (part), G (part), 5.13.B  
14 (part), 5.16.E (part); TREITA 25.20(A) (part), (G) (part), 25.30(B)  
15 (part).)

16 Sec. 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF  
17 OWNERSHIP INTEREST. (a) An owner may withdraw a demand for the  
18 payment of the fair value of an ownership interest made under  
19 Section 10.356 before:

20 (1) payment for the ownership interest has been made  
21 under Sections 10.358 and 10.361; or

22 (2) a petition has been filed under Section 10.361.

23 (b) Unless the responsible organization consents to the  
24 withdrawal of the demand, an owner may not withdraw a demand for  
25 payment under Subsection (a) after either of the events specified  
26 in Subsections (a)(1) and (2). (TBCA 5.13.C (part); TREITA 25.30(C)  
27 (part).)

1           Sec. 10.358.   RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT  
2   AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER. (a) Not later than  
3   the 20th day after the date a responsible organization receives a  
4   demand for payment made by a dissenting owner in accordance with  
5   Section 10.356, the responsible organization shall respond to the  
6   dissenting owner in writing by:

7           (1) accepting the amount claimed in the demand as the  
8   fair value of the ownership interests specified in the notice; or

9           (2) rejecting the demand and including in the response  
10   the requirements prescribed by Subsection (c).

11          (b) If the responsible organization accepts the amount  
12   claimed in the demand, the responsible organization shall pay the  
13   amount not later than the 90th day after the date the action that is  
14   the subject of the demand was effected if the owner delivers to the  
15   responsible organization:

16          (1) endorsed certificates representing the ownership  
17   interests if the ownership interests are certificated; or

18          (2) signed assignments of the ownership interests if  
19   the ownership interests are uncertificated.

20          (c) If the responsible organization rejects the amount  
21   claimed in the demand, the responsible organization shall provide  
22   to the owner:

23          (1) an estimate by the responsible organization of the  
24   fair value of the ownership interests; and

25          (2) an offer to pay the amount of the estimate provided  
26   under Subdivision (1).

27          (d) An offer made under Subsection (c)(2) must remain open

1 for a period of at least 60 days from the date the offer is first  
2 delivered to the dissenting owner.

3 (e) If a dissenting owner accepts an offer made by a  
4 responsible organization under Subsection (c)(2) or if a dissenting  
5 owner and a responsible organization reach an agreement on the fair  
6 value of the ownership interests, the responsible organization  
7 shall pay the agreed amount not later than the 60th day after the  
8 date the offer is accepted or the agreement is reached, as  
9 appropriate, if the dissenting owner delivers to the responsible  
10 organization:

11 (1) endorsed certificates representing the ownership  
12 interests if the ownership interests are certificated; or

13 (2) signed assignments of the ownership interests if  
14 the ownership interests are uncertificated. (TBCA 5.12.A (part),  
15 5.16.E (part); TREITA 25.20(A) (part).)

16 Sec. 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP  
17 INTEREST. (a) A responsible organization shall note in the  
18 organization's ownership interest records maintained under Section  
19 3.151 the receipt of a demand for payment from any dissenting owner  
20 made under Section 10.356.

21 (b) If an ownership interest that is the subject of a demand  
22 for payment made under Section 10.356 is transferred, a new  
23 certificate representing that ownership interest must contain:

24 (1) a reference to the demand; and

25 (2) the name of the original dissenting owner of the  
26 ownership interest. (TBCA 5.13.B (part); TREITA 25.30(B) (part).)

27 Sec. 10.360. RIGHTS OF TRANSFEREE OF CERTAIN OWNERSHIP

1 INTEREST. A transferee of an ownership interest that is the subject  
2 of a demand for payment made under Section 10.356 does not acquire  
3 additional rights with respect to the responsible organization  
4 following the transfer. The transferee has only the rights the  
5 original dissenting owner had with respect to the responsible  
6 organization after making the demand. (TBCA 5.13.B (part); TREITA  
7 25.30(B) (part).)

8 Sec. 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF  
9 OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF  
10 APPRAISERS. (a) If a responsible organization rejects the amount  
11 demanded by a dissenting owner under Section 10.358 and the  
12 dissenting owner and responsible organization are unable to reach  
13 an agreement relating to the fair value of the ownership interests  
14 within the period prescribed by Section 10.358(d), the dissenting  
15 owner or responsible organization may file a petition requesting a  
16 finding and determination of the fair value of the owner's  
17 ownership interests in a court in:

18 (1) the county in which the organization's principal  
19 office is located in this state; or

20 (2) the county in which the organization's registered  
21 office is located in this state, if the organization does not have a  
22 business office in this state.

23 (b) A petition described by Subsection (a) must be filed not  
24 later than the 60th day after the expiration of the period required  
25 by Section 10.358(d).

26 (c) On the filing of a petition by an owner under Subsection  
27 (a), service of a copy of the petition shall be made to the

1 responsible organization. Not later than the 10th day after the  
2 date a responsible organization receives service under this  
3 subsection, the responsible organization shall file with the clerk  
4 of the court in which the petition was filed a list containing the  
5 names and addresses of each owner of the organization who has  
6 demanded payment for ownership interests under Section 10.356 and  
7 with whom agreement as to the value of the ownership interests has  
8 not been reached with the responsible organization. If the  
9 responsible organization files a petition under Subsection (a), the  
10 petition must be accompanied by this list.

11 (d) The clerk of the court in which a petition is filed under  
12 this section shall provide by registered mail notice of the time and  
13 place set for the hearing to:

14 (1) the responsible organization; and

15 (2) each owner named on the list described by  
16 Subsection (c) at the address shown for the owner on the list.

17 (e) The court shall:

18 (1) determine which owners have:

19 (A) perfected their rights by complying with this  
20 subchapter; and

21 (B) become subsequently entitled to receive  
22 payment for the fair value of their ownership interests; and

23 (2) appoint one or more qualified appraisers to  
24 determine the fair value of the ownership interests of the owners  
25 described by Subdivision (1).

26 (f) The court shall approve the form of a notice required to  
27 be provided under this section. The judgment of the court is final



1 and binding on the responsible organization, any other organization  
2 obligated to make payment under this subchapter for an ownership  
3 interest, and each owner who is notified as required by this  
4 section. (TBCA 5.12.B, C (part), 5.16.E (part); TREITA 25.20(B),  
5 (C) (part).)

6       Sec. 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF  
7 OWNERSHIP INTEREST. (a) For purposes of this subchapter, the fair  
8 value of an ownership interest of a domestic entity subject to  
9 dissenters' rights is the value of the ownership interest on the  
10 date preceding the date of the action that is the subject of the  
11 appraisal. Any appreciation or depreciation in the value of the  
12 ownership interest occurring in anticipation of the proposed action  
13 or as a result of the action must be specifically excluded from the  
14 computation of the fair value of the ownership interest.

15       (b) In computing the fair value of an ownership interest  
16 under this subchapter, consideration must be given to the value of  
17 the organization as a going concern without including in the  
18 computation of value any:

19           (1) payment for a control premium or minority discount  
20 other than a discount attributable to the type of ownership  
21 interests held by the dissenting owner; and

22           (2) limitation placed on the rights and preferences of  
23 those ownership interests.

24       (c) The determination of the fair value of an ownership  
25 interest made for purposes of this subchapter may not be used for  
26 purposes of making a determination of the fair value of that  
27 ownership interest for another purpose or of the fair value of

1 another ownership interest, including for purposes of determining  
2 any minority or liquidity discount that might apply to a sale of an  
3 ownership interest. (TBCA 5.12.A(1) (part).)

4 Sec. 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL  
5 PROCEDURES. (a) An appraiser appointed under Section 10.361 has  
6 the power and authority that:

7 (1) is granted by the court in the order appointing the  
8 appraiser; and

9 (2) may be conferred by a court to a master in chancery  
10 as provided by Rule 171, Texas Rules of Civil Procedure.

11 (b) The appraiser shall:

12 (1) determine the fair value of an ownership interest  
13 of an owner adjudged by the court to be entitled to payment for the  
14 ownership interest; and

15 (2) file with the court a report of that  
16 determination.

17 (c) The appraiser is entitled to examine the books and  
18 records of a responsible organization and may conduct  
19 investigations as the appraiser considers appropriate. A  
20 dissenting owner or responsible organization may submit to an  
21 appraiser evidence or other information relevant to the  
22 determination of the fair value of the ownership interest required  
23 by Subsection (b)(1).

24 (d) The clerk of the court appointing the appraiser shall  
25 provide notice of the filing of the report under Subsection (b) to  
26 each dissenting owner named in the list filed under Section 10.361  
27 and the responsible organization. (TBCA 5.12.C (part), D (part));

1 TREITA 25.20(C) (part), (D) (part).)

2           Sec. 10.364. OBJECTION TO APPRAISAL; HEARING. (a) A  
3 dissenting owner or responsible organization may object, based on  
4 the law or the facts, to all or part of an appraisal report  
5 containing the fair value of an ownership interest determined under  
6 Section 10.363(b).

7           (b) If an objection to a report is raised under Subsection  
8 (a), the court shall hold a hearing to determine the fair value of  
9 the ownership interest that is the subject of the report. After the  
10 hearing, the court shall require the responsible organization to  
11 pay to the holders of the ownership interest the amount of the  
12 determined value with interest, accruing from the 91st day after  
13 the date the applicable action for which the owner elected to  
14 dissent was effected until the date of the judgment.

15           (c) Interest under Subsection (b) accrues at the same rate  
16 as is provided for the accrual of prejudgment interest in civil  
17 cases.

18           (d) The responsible organization shall:

19               (1) immediately pay the amount of the judgment to a  
20 holder of an uncertificated ownership interest; and

21               (2) pay the amount of the judgment to a holder of a  
22 certificated ownership interest immediately after the certificate  
23 holder surrenders to the responsible organization an endorsed  
24 certificate representing the ownership interest.

25           (e) On payment of the judgment, the dissenting owner does  
26 not have an interest in the:

27               (1) ownership interest for which the payment is made;

1 or

2 (2) responsible organization with respect to that  
3 ownership interest. (TBCA 5.12.D (part); TREITA 25.20(D) (part).)

4 Sec. 10.365. COURT COSTS; COMPENSATION FOR APPRAISER. (a)  
5 An appraiser appointed under Section 10.361 is entitled to a  
6 reasonable fee payable from court costs.

7 (b) All court costs shall be allocated between the  
8 responsible organization and the dissenting owners in the manner  
9 that the court determines to be fair and equitable. (TBCA 5.12.D  
10 (part); TREITA 25.20(D) (part).)

11 Sec. 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY  
12 HELD BY DISSENTING OWNER. (a) An ownership interest of an  
13 organization acquired by a responsible organization under this  
14 subchapter:

15 (1) in the case of a merger, conversion, or interest  
16 exchange, shall be held or disposed of as provided in the plan of  
17 merger, conversion, or interest exchange; and

18 (2) in any other case, may be held or disposed of by  
19 the responsible organization in the same manner as other ownership  
20 interests acquired by the organization or held in its treasury.

21 (b) An owner who has demanded payment for the owner's  
22 ownership interest under Section 10.356 is not entitled to vote or  
23 exercise any other rights of another owner with respect to the  
24 ownership interest except the right to:

25 (1) receive payment for the ownership interest under  
26 this subchapter; and

27 (2) bring an appropriate action to obtain relief on

1 the ground that the action to which the demand relates would be or  
2 was fraudulent.

3 (c) An ownership interest for which payment has been  
4 demanded under Section 10.356 may not be considered outstanding for  
5 purposes of any subsequent vote or action. (TBCA 5.12.E, 5.13.A;  
6 TREITA 25.20(E), 25.30(A).)

7 Sec. 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF  
8 RIGHT OF DISSENT. (a) The rights of a dissenting owner terminate  
9 if:

10 (1) the owner withdraws the demand under Section  
11 10.356;

12 (2) the owner's right of dissent is terminated under  
13 Section 10.356;

14 (3) a petition is not filed within the period required  
15 by Section 10.361; or

16 (4) after a hearing held under Section 10.361, the  
17 court adjudges that the owner is not entitled to elect to dissent  
18 from an action under this subchapter.

19 (b) On termination of the right of dissent under this  
20 section:

21 (1) the dissenting owner and all persons claiming a  
22 right under the owner are conclusively presumed to have approved  
23 and ratified the action to which the owner dissented and are bound  
24 by that action;

25 (2) the owner's right to be paid the fair value of the  
26 owner's ownership interests ceases and the owner's status as an  
27 owner of those ownership interests is restored without prejudice in

1 any interim proceeding if the owner's ownership interests were not  
2 canceled, converted, or exchanged as a result of the action or a  
3 subsequent fundamental business transaction; and

4 (3) the dissenting owner is entitled to receive  
5 dividends or other distributions made in the interim to owners of  
6 the same class and series of ownership interests held by the owner  
7 as if a demand for the payment of the ownership interests had not  
8 been made under Section 10.356, subject to any change in or  
9 adjustment to ownership interests because of the cancellation or  
10 exchange of the ownership interests after the date a demand under  
11 Section 10.356 was made pursuant to a fundamental business  
12 transaction. (TBCA 5.13.C (part); TREITA 25.30(C) (part).)

13 Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND  
14 APPRAISAL. In the absence of fraud in the transaction, any right of  
15 an owner of an ownership interest to dissent from an action and  
16 obtain the fair value of the ownership interest under this  
17 subchapter is the exclusive remedy for recovery of:

18 (1) the value of the ownership interest or money  
19 damages to the owner with respect to the ownership interest; and

20 (2) the owner's right in the organization with respect  
21 to a fundamental business transaction. (TBCA 5.12.G (part), 5.16.E  
22 (part); TREITA 25.20(G) (part).)

23 [Sections 10.369-10.900 reserved for expansion]

#### 24 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

25 Sec. 10.901. CREDITORS; ANTITRUST. This code does not  
26 affect, nullify, or repeal the antitrust laws or abridge any right  
27 or rights of any creditor under existing laws. (TBCA 5.15.)

1           Sec. 10.902. NONEXCLUSIVITY. This chapter does not limit  
2 the power of a domestic entity or non-code organization to acquire  
3 all or part of the ownership or membership interests of one or more  
4 classes or series of a domestic entity through a voluntary exchange  
5 or otherwise. (TBCA 5.01.E, 5.02.E; TREITA 23.10(E), 23.20(E).)

6           CHAPTER 11. WINDING UP AND TERMINATION OF DOMESTIC ENTITY

7                   SUBCHAPTER A. GENERAL PROVISIONS

8           Sec. 11.001. DEFINITIONS. In this chapter:

9                   (1) "Claim" means a right to payment, damages, or  
10 property, whether liquidated or unliquidated, accrued or  
11 contingent, matured or unmatured.

12                   (2) "Event requiring a winding up" means an event  
13 specified by Section 11.051.

14                   (3) "Existing claim" with respect to an entity means:

15                           (A) a claim against the entity that existed  
16 before the entity's termination and is not barred by limitations;  
17 or

18                           (B) a contractual obligation incurred after  
19 termination.

20                   (4) "Terminated entity" means a domestic entity the  
21 existence of which has been:

22                           (A) terminated in a manner authorized or required  
23 by this code, unless the entity has been reinstated in the manner  
24 provided by this code; or

25                           (B) forfeited pursuant to the Tax Code, unless  
26 the forfeiture has been set aside.

27                   (5) "Terminated filing entity" means a terminated

1 entity that is a filing entity.

2 (6) "Voluntary decision to wind up" means the  
3 determination to wind up a domestic entity made by the domestic  
4 entity or the owners, members, or governing authority of the  
5 domestic entity in the manner specified by the title of this code  
6 governing the domestic entity.

7 (7) "Voluntary winding up" means winding up as a  
8 result of a voluntary decision to wind up.

9 (8) "Winding up" means the process of winding up the  
10 business and affairs of a domestic entity as a result of the  
11 occurrence of an event requiring winding up. (TBCA 7.12.F; TNPCA  
12 7.12.H; TLLCA 8.12.A.)

13 [Sections 11.002-11.050 reserved for expansion]

14 SUBCHAPTER B. WINDING UP OF DOMESTIC ENTITY

15 Sec. 11.051. EVENT REQUIRING WINDING UP OF DOMESTIC ENTITY.

16 Winding up of a domestic entity is required on:

17 (1) the expiration of the domestic entity's period of  
18 duration, if not perpetual;

19 (2) a voluntary decision to wind up the domestic  
20 entity;

21 (3) an event specified in the governing documents of  
22 the domestic entity requiring the winding up, dissolution, or  
23 termination of the domestic entity;

24 (4) an event specified in this code requiring the  
25 winding up or termination of the domestic entity; or

26 (5) a decree by a court requiring the winding up or  
27 dissolution of the domestic entity, rendered under this code or



1 other law. (TBCA 6.01 (part), 6.02.A, 6.03.A (part), 7.01.A  
2 (part), B (part), F (part), 7.09 (part), 7.12.E (part); TLLCA  
3 6.01.A (part); TNPCA 6.01.A (part), 7.01.A (part), B (part), F  
4 (part), 7.09 (part), 7.12.G (part); TPAA 8(B) (part); TREITA  
5 3.10(A) (part), 19.10 (part); TRLPA 8.01, 8.02 (part); TRPA  
6 8.01(a), (b), (c), (d), (e).)

7       Sec. 11.052. WINDING UP PROCEDURES. (a) Except as provided  
8 by the title of this code governing the domestic entity, on the  
9 occurrence of an event requiring winding up of a domestic entity,  
10 unless the event requiring winding up is revoked under Section  
11 11.151 or canceled under Section 11.152, the owners, members,  
12 managerial officials, or other persons specified in the title of  
13 this code governing the domestic entity shall, as soon as  
14 reasonably practicable, wind up the business and affairs of the  
15 domestic entity. The domestic entity shall:

16               (1) cease to carry on its business, except to the  
17 extent necessary to wind up its business;

18               (2) if the domestic entity is not a partnership, send a  
19 written notice of the winding up to each known claimant against the  
20 domestic entity;

21               (3) collect and sell its property to the extent the  
22 property is not to be distributed in kind to the domestic entity's  
23 owners or members; and

24               (4) perform any other act required to wind up its  
25 business and affairs.

26       (b) During the winding up process, the domestic entity may  
27 prosecute or defend a civil, criminal, or administrative action.

1 (TBCA 6.04 (part); TLLCA 6.03 (part), 6.05 (part); TREITA 19.10  
2 (part); TRLPA 8.04(a) (part), (b) (part); TRPA 8.03(a), (b)  
3 (part).)

4 Sec. 11.053. PROPERTY APPLIED TO DISCHARGE LIABILITIES AND  
5 OBLIGATIONS. (a) Except as provided by Subsection (b) and the title  
6 of this code governing the domestic entity, a domestic entity in the  
7 process of winding up shall apply and distribute its property to  
8 discharge, or make adequate provision for the discharge of, all of  
9 the domestic entity's liabilities and obligations.

10 (b) Except as provided by the title of this code governing  
11 the domestic entity, if the property of a domestic entity is not  
12 sufficient to discharge all of the domestic entity's liabilities  
13 and obligations, the domestic entity shall:

14 (1) apply its property, to the extent possible, to the  
15 just and equitable discharge of its liabilities and obligations,  
16 including liabilities and obligations owed to owners or members,  
17 other than for distributions; or

18 (2) make adequate provision for the application of the  
19 property described by Subdivision (1).

20 (c) Except as provided by the title of this code governing  
21 the domestic entity, after a domestic entity has discharged, or  
22 made adequate provision for the discharge of, all of its  
23 liabilities and obligations, the domestic entity shall distribute  
24 the remainder of its property, in cash or in kind, to the domestic  
25 entity's owners according to their respective rights and interests.

26 (d) A domestic entity may continue its business wholly or  
27 partly, including delaying the disposition of property of the

1 domestic entity, for the limited period necessary to avoid  
2 unreasonable loss of the entity's property or business. (TBCA 6.04  
3 (part); TLLCA 6.04 (part), 6.05 (part); TNPCA 6.02.A(1); TREITA  
4 19.10 (part); TRLPA 8.04(b) (part), 8.05; TRPA 8.03(b) (part), (c),  
5 8.06(a).)

6 Sec. 11.054. COURT SUPERVISION OF WINDING UP PROCESS.  
7 Subject to the other provisions of this code, on application of a  
8 domestic entity or an owner or member of a domestic entity, a court  
9 may:

- 10 (1) supervise the winding up of the domestic entity;
- 11 (2) appoint a person to carry out the winding up of the  
12 domestic entity; and
- 13 (3) make any other order, direction, or inquiry that  
14 the circumstances may require. (TBCA 6.04 (part); TLLCA 6.05  
15 (part); TNPCA 6.02.A(3) (part); TRLPA 8.04(a) (part); TRPA 8.01(e),  
16 8.03(a) (part).)

17 Sec. 11.055. COURT ACTION OR PROCEEDING DURING WINDING UP.  
18 During the winding up process, a domestic entity may continue  
19 prosecuting or defending a court action or proceeding by or against  
20 the domestic entity. (TBCA 7.12.A (part); TLLCA 6.08.B (part);  
21 TNPCA 7.12.A (part); TRLPA 8.04(b) (part).)

22 Sec. 11.056. SUPPLEMENTAL EVENT REQUIRING WINDING UP OF  
23 LIMITED LIABILITY COMPANY. In addition to an event listed under  
24 Section 11.051, the termination of the continued membership of the  
25 last remaining member of a limited liability company is an event  
26 requiring a winding up unless, not later than the 90th day after the  
27 date of the termination, the legal representative or successor of

1 the last remaining member agrees:

2 (1) to continue the company; and

3 (2) to become a member of the company effective as of  
4 the date of the termination or to designate another person who  
5 agrees to become a member of the company effective as of the date of  
6 the termination. (Del. Limited Liability Company Act 18-801(a)  
7 (part); TLLCA 6.01.A (part).)

8 Sec. 11.057. SUPPLEMENTAL EVENTS REQUIRING WINDING UP OF  
9 GENERAL PARTNERSHIP. (a) An event requiring winding up of a general  
10 partnership includes, in addition to any event specified in Section  
11 11.051, the following:

12 (1) in a general partnership that is not for a definite  
13 term or for a particular undertaking or in which the partnership  
14 agreement does not provide for winding up the partnership business  
15 on a specified event, the express will of a majority-in-interest of  
16 the partners who have not assigned their interests;

17 (2) in a general partnership for a definite term or for  
18 a particular undertaking, on:

19 (A) the express will of all of the partners; or

20 (B) the expiration of the term or the completion  
21 of the undertaking, unless otherwise continued under Section  
22 152.709;

23 (3) in a general partnership in which the partnership  
24 agreement provides for the winding up of the partnership business  
25 on a specified event, upon:

26 (A) the express will of all of the partners; or

27 (B) the occurrence of the specified event, unless

1 otherwise continued under Section 152.709;

2 (4) an event that makes it illegal for all or  
3 substantially all of the partnership business to be continued, but  
4 a cure of illegality before the 91st day after the date of notice to  
5 the general partnership of the event is effective retroactively to  
6 the date of the event for purposes of this subsection;

7 (5) the sale of all or substantially all of the  
8 property of the general partnership outside the ordinary course of  
9 business; and

10 (6) if a general partnership is not for a definite term  
11 or a particular undertaking and its partnership agreement does not  
12 provide for a specified event requiring a winding up of the  
13 partnership business, a request for winding up the partnership  
14 business from a partner, other than a partner who has agreed not to  
15 withdraw.

16 (b) An event described by Subsection (a)(6) requires the  
17 winding up of a general partnership 60 days after the date on which  
18 the general partnership receives notice of the request or at a later  
19 date as specified by the notice, unless a majority-in-interest of  
20 the partners agree to continue the general partnership. (TRPA  
21 8.01(a), (b), (c), (d), (f), (g) (part).)

22 Sec. 11.058. SUPPLEMENTAL EVENTS REQUIRING WINDING UP OF  
23 LIMITED PARTNERSHIP. An event requiring the winding up of a limited  
24 partnership includes, in addition to any event specified in Section  
25 11.051, the following:

26 (1) written consent of all partners to the winding up  
27 and termination of the limited partnership; and

1           (2) an event of withdrawal of a general partner.  
2 (TRLPA 8.01 (part).)

3           Sec. 11.059. SUPPLEMENTAL PROVISIONS FOR CORPORATIONS. For  
4 purposes of Section 11.051(3), the event requiring the winding up,  
5 dissolution, or termination of a domestic corporation must be  
6 specific in:

7           (1) the certificate of formation of the corporation;  
8 or

9           (2) bylaws of the corporation adopted by the owners or  
10 members of the corporation in the same manner as an amendment to the  
11 certificate of formation of the corporation. (New.)

12           [Sections 11.060-11.100 reserved for expansion]

13           SUBCHAPTER C. TERMINATION OF DOMESTIC ENTITY

14           Sec. 11.101. CERTIFICATE OF TERMINATION FOR FILING ENTITY.

15           (a) On completion of the winding up process under Subchapter B, a  
16 filing entity must file a certificate of termination in accordance  
17 with Chapter 4.

18           (b) A certificate from the comptroller that all taxes  
19 administered by the comptroller under Title 2, Tax Code, have been  
20 paid must be filed with the certificate of termination in  
21 accordance with Chapter 4 if the filing entity is a professional  
22 corporation, for-profit corporation, or limited liability company.

23           (c) The certificate of termination must contain:

24           (1) the name of the filing entity;

25           (2) the name and address of each of the filing entity's  
26 governing persons;

27           (3) the entity's file number assigned by the secretary

1 of state, unless the entity is a real estate investment trust;

2 (4) the nature of the event requiring winding up;

3 (5) a statement that the filing entity has complied  
4 with the provisions of this code governing its winding up; and

5 (6) any other information required by this code to be  
6 included in the certificate of termination for the filing entity.

7 (TBCA 6.06 (part), 6.07 (part); TLLCA 6.07 (part), 6.08.A (part);  
8 TNPCA 6.05 (part); TPAA 18 (part); TREITA 19.20(A), (B); TRLPA  
9 2.03(a) (part), (b).)

10 Sec. 11.102. EFFECTIVENESS OF TERMINATION OF FILING ENTITY.

11 Except as otherwise provided by this chapter, the existence of a  
12 filing entity terminates on the filing of a certificate of  
13 termination with the filing officer. (TBCA 6.01.A(3) (part),  
14 6.07.B (part); TLLCA 6.08.B (part); TNPCA 6.06.B; TREITA 19.20(C);  
15 TRLPA 2.03(a) (part).)

16 Sec. 11.103. EFFECTIVENESS OF TERMINATION OF NONFILING  
17 ENTITY. Except as otherwise provided by this chapter, the existence  
18 of a nonfiling entity terminates on the completion of the winding up  
19 of its business and affairs. Notice of the termination must be  
20 provided by the nonfiling entity in the manner provided in the  
21 governing documents of the nonfiling entity if notice of  
22 termination is required under the governing documents. (TRPA  
23 8.02.)

24 Sec. 11.104. ACTION BY SECRETARY OF STATE. The secretary of  
25 state shall remove from its active records a domestic filing entity  
26 whose period of duration has expired when the secretary of state  
27 determines that:

1           (1) the entity has failed to file a certificate of  
2 termination in accordance with Section 11.101; and

3           (2) the entity has failed to file an amendment to  
4 extend its existence in accordance with Section 11.152. (New.)

5           Sec. 11.105. SUPPLEMENTAL INFORMATION REQUIRED BY  
6 CERTIFICATE OF TERMINATION OF NONPROFIT CORPORATION. (a) In  
7 addition to the information required by Section 11.101, the  
8 certificate of termination filed by a nonprofit corporation that  
9 has completed its winding up process must contain a statement that:

10           (1) any property of the nonprofit corporation has been  
11 transferred, conveyed, applied, or distributed in accordance with  
12 this chapter and Chapter 22; and

13           (2) there is no suit pending against the nonprofit  
14 corporation or adequate provision has been made for the  
15 satisfaction of any judgment, order, or decree that may be entered  
16 against the nonprofit corporation in a pending suit.

17           (b) In addition to the statements required by Subsection  
18 (a), if the nonprofit corporation received and held property  
19 permitted to be used only for charitable, religious, eleemosynary,  
20 benevolent, educational, or similar purposes, but the nonprofit  
21 corporation did not hold the property on a condition requiring  
22 return, transfer, or conveyance because of the winding up and  
23 termination, the certificate of termination must include a  
24 statement that distribution of that property has been effected in  
25 accordance with a plan of distribution adopted in compliance with  
26 this code for the distribution of that property. (TNPCA 6.05  
27 (part).)



1 [Sections 11.106-11.150 reserved for expansion]

2 SUBCHAPTER D. REVOCATION AND CONTINUATION

3 Sec. 11.151. REVOCATION OF VOLUNTARY WINDING UP. (a)

4 Before the termination of the existence of a domestic entity takes  
5 effect, the domestic entity may revoke a voluntary decision to wind  
6 up the entity by approval of the revocation in the manner specified  
7 in the title of this code governing the entity.

8 (b) A domestic entity may continue its business following  
9 the revocation of a voluntary decision to wind up under Subsection  
10 (a). (TBCA 6.05.A (part), D (part); TLLCA 6.06; TNPCA 6.04.A  
11 (part), B; TRPA 8.01(g) (part); TRLPA 8.01 (part).)

12 Sec. 11.152. CONTINUATION OF BUSINESS WITHOUT WINDING UP.

13 (a) Subject to Subsections (c) and (d), a domestic entity to which  
14 an event requiring the winding up of the entity occurs as specified  
15 by Section 11.051(3) or (4) may cancel the event requiring winding  
16 up in the manner specified in the title of this code governing the  
17 domestic entity not later than the first anniversary of the date of  
18 the event requiring winding up or an earlier period prescribed by  
19 the title of this code governing the domestic entity.

20 (b) A domestic entity to which an event requiring winding up  
21 as specified in Section 11.051(1) occurs may cancel the event  
22 requiring winding up by amending its governing documents in the  
23 manner provided by this code, not later than the third anniversary  
24 of the date of the event requiring winding up or an earlier date  
25 prescribed by the title of this code governing the domestic entity,  
26 to extend the period of its duration. The expiration of the period  
27 of its duration does not by itself create a vested right on the part

1 of an owner, member, or creditor of the entity to prevent the  
2 extension of its existence. An act undertaken or a contract entered  
3 into by a terminated entity during a period in which the entity  
4 could have extended its existence under this section is not  
5 invalidated by the expiration of the period of the entity's  
6 duration, regardless of whether the entity has taken any action to  
7 extend its existence.

8 (c) A domestic entity may not cancel an event requiring  
9 winding up specified in Section 11.051(3) and continue its business  
10 if the action is prohibited by the entity's governing documents or  
11 the title of this code governing the entity.

12 (d) A domestic entity may cancel an event requiring winding  
13 up specified in Section 11.051(4) and continue its business only if  
14 the action:

15 (1) is not prohibited by the entity's governing  
16 documents; and

17 (2) is expressly authorized by the title of this code  
18 governing the entity.

19 (e) On cancellation of an event requiring winding up under  
20 this section, the domestic entity may continue its business. (TBCA  
21 7.12.E; TNPCA 7.12.G; TLLCA 6.01.B, 8.12.A; TRPA 4.07(a); TRLPA  
22 8.01 (part).)

23 [Sections 11.153-11.200 reserved for expansion]

#### 24 SUBCHAPTER E. REINSTATEMENT OF TERMINATED ENTITY

25 Sec. 11.201. CONDITIONS FOR REINSTATEMENT. (a) A  
26 terminated entity may be reinstated under this subchapter if:

27 (1) the termination was by mistake or inadvertent;

1           (2) the termination occurred without the approval of  
2 the entity's governing persons when their approval is required by  
3 the title of this code governing the terminated entity;

4           (3) the process of winding up before termination had  
5 not been completed by the entity; or

6           (4) the legal existence of the entity is necessary to:

7                 (A) convey or assign property;

8                 (B) settle or release a claim or liability;

9                 (C) take an action; or

10                (D) sign an instrument or agreement.

11           (b) A terminated entity may not be reinstated under this  
12 section if the termination occurred as a result of:

13                 (1) an order of a court or the secretary of state;

14                 (2) an event requiring winding up that is specified in  
15 the title of this code governing the terminated entity, if that  
16 title prohibits reinstatement; or

17                 (3) forfeiture under the Tax Code. (TBCA 6.05.A  
18 (part).)

19           Sec. 11.202. PROCEDURES FOR REINSTATEMENT. (a) To the  
20 extent applicable, a terminated entity, to be reinstated, must  
21 complete the requirements of this section not later than the third  
22 anniversary of the date the termination of the terminated entity's  
23 existence took effect.

24           (b) The owners, members, governing persons, or other  
25 persons must approve the reinstatement of the domestic entity in  
26 the manner provided by the title of this code governing the domestic  
27 entity.

1           (c) After approval of the reinstatement of a filing entity  
2 that was terminated, and not later than the third anniversary of the  
3 date of the filing of the entity's certificate of termination, the  
4 filing entity shall file a certificate of reinstatement in  
5 accordance with Chapter 4.

6           (d) A certificate of reinstatement filed under Subsection  
7 (c) must contain:

- 8                 (1) the name of the filing entity;
- 9                 (2) the filing number the filing officer assigned to  
10 the entity;
- 11                (3) the effective date of the entity's termination;
- 12                (4) a statement that the reinstatement of the filing  
13 entity has been approved in the manner required by this code; and
- 14                (5) the name of the entity's registered agent and the  
15 address of the entity's registered office.

16           (e) A letter of eligibility from the comptroller stating  
17 that the filing entity has satisfied all franchise tax liabilities  
18 and may be reinstated must be filed with the certificate of  
19 reinstatement if the filing entity is a professional corporation,  
20 for-profit corporation, or limited liability company. (TBCA  
21 6.05.B.)

22           Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED  
23 NAME. If the secretary of state determines that a filing entity's  
24 name contained in a certificate of reinstatement filed under  
25 Section 11.202 is the same as, deceptively similar to, or similar to  
26 a name of a filing entity or foreign entity on file as provided by or  
27 reserved or registered under this code, the secretary of state may

1 not accept for filing the certificate of reinstatement unless the  
2 filing entity contemporaneously amends its certificate of  
3 formation to change its name or obtains consent for the use of the  
4 similar name. (TBCA 6.05.C.)

5 Sec. 11.204. EFFECTIVENESS OF REINSTATEMENT OF NONFILING  
6 ENTITY. The reinstatement of a terminated nonfiling entity takes  
7 effect on the approval required by Section 11.202(b). (New.)

8 Sec. 11.205. EFFECTIVENESS OF REINSTATEMENT OF FILING  
9 ENTITY. The reinstatement of a terminated filing entity that  
10 previously filed a certificate of termination takes effect on the  
11 filing of the entity's certificate of reinstatement. (TBCA 6.05.D  
12 (part).)

13 Sec. 11.206. EFFECT OF REINSTATEMENT. When the  
14 reinstatement of a terminated entity takes effect:

15 (1) the existence of the terminated entity is  
16 considered to have continued without interruption from the date of  
17 termination; and

18 (2) the terminated entity may carry on its business as  
19 if the termination of its existence had not occurred. (TBCA 6.05.D  
20 (part).)

21 [Sections 11.207-11.250 reserved for expansion]

22 . SUBCHAPTER F. INVOLUNTARY TERMINATION OF FILING ENTITY

23 BY SECRETARY OF STATE

24 Sec. 11.251. TERMINATION OF FILING ENTITY BY SECRETARY OF  
25 STATE. (a) If it appears to the secretary of state that, with  
26 respect to a filing entity, a circumstance described by Subsection  
27 (b) exists, the secretary of state may notify the entity of the

1 circumstance by regular or certified mail addressed to the entity  
2 at the entity's registered office or principal place of business as  
3 shown on the records of the secretary of state.

4 (b) The secretary of state may terminate a filing entity's  
5 existence if the secretary finds that the entity has failed to, and,  
6 before the 91st day after the date notice was mailed has not  
7 corrected the entity's failure to:

8 (1) file a report within the period required by law or  
9 to pay a fee or penalty prescribed by law when due and payable;

10 (2) maintain a registered agent or registered office  
11 in this state as required by law; or

12 (3) pay a fee required in connection with a filing, or  
13 payment of the fee was dishonored when presented by the state for  
14 payment.

15 (c) This subchapter shall not apply to real estate  
16 investment trusts. (TBCA 7.01.B, C(1); TLLCA 8.12.A; TNPCA 7.01.B,  
17 C(1); TRLPA 13.06(a), (b), 13.08(a).)

18 Sec. 11.252. CERTIFICATE OF TERMINATION. (a) If  
19 termination of a filing entity's existence is required, the  
20 secretary of state shall:

21 (1) issue a certificate of termination; and

22 (2) deliver a certificate of termination by regular or  
23 certified mail to the filing entity at its registered office or  
24 principal place of business.

25 (b) The certificate of termination must state:

26 (1) that the filing entity has been involuntarily  
27 terminated; and

1           (2) the date and cause of the termination.

2           (c) Except as otherwise provided by this chapter, the  
3 existence of the filing entity is terminated on the issuance of the  
4 certificate of termination by the secretary of state. (TBCA  
5 7.01.C(2), D; TLLCA 8.12.A; TNPCA 7.01.C(2), D; TRLPA 13.06(b)  
6 (part), 13.08(a) (part).)

7           Sec. 11.253. REINSTATEMENT BY SECRETARY OF STATE AFTER  
8 INVOLUNTARY TERMINATION. (a) The secretary of state shall  
9 reinstate a filing entity that has been involuntarily terminated  
10 under this subchapter if the entity files a certificate of  
11 reinstatement in accordance with Chapter 4 and:

12           (1) the entity has corrected the circumstances that  
13 led to the involuntary termination and any other circumstances that  
14 may exist of the types described by Section 11.251(b), including  
15 the payment of fees, interest, or penalties; or

16           (2) the secretary of state finds that the  
17 circumstances that led to the involuntary termination did not exist  
18 at the time of termination.

19           (b) A certificate of reinstatement filed under Subsection  
20 (a) must contain:

21           (1) the name of the filing entity;

22           (2) the filing number assigned by the filing officer  
23 to the entity;

24           (3) the effective date of the involuntary termination;

25           (4) a statement that the circumstances giving rise to  
26 the involuntary termination have been corrected; and

27           (5) the name of the entity's registered agent and the

1 address of the entity's registered office.

2 (c) A certificate of reinstatement must be accompanied by  
3 each amendment to the entity's certificate of formation that is  
4 required by intervening events, including circumstances requiring  
5 an amendment to the filing entity's name as described in Section  
6 11.203.

7 (d) If a filing entity is reinstated before the third  
8 anniversary of the date of its involuntary termination, the entity  
9 is considered to have continued in existence without interruption  
10 from the date of termination. The reinstatement shall have no  
11 effect on any issue of personal liability of the governing persons,  
12 officers, or agents of the filing entity during the period between  
13 termination and reinstatement. (TBCA 7.01.E (part); TLLCA 8.12.A;  
14 TNPCA 7.01.E (part); TRLPA 13.09(a), (b) (part).)

15 Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION  
16 FOLLOWING TAX FORFEITURE. A filing entity whose certificate of  
17 formation has been forfeited under the provisions of the Tax Code  
18 must follow the procedures in the Tax Code to reinstate its  
19 certificate of formation. (TBCA 7.12.F(1) (part); TLLCA 8.12.A.)

20 [Sections 11.255-11.300 reserved for expansion]

21 SUBCHAPTER G. JUDICIAL WINDING UP AND TERMINATION

22 Sec. 11.301. INVOLUNTARY WINDING UP AND TERMINATION OF  
23 FILING ENTITY BY COURT ACTION. (a) A court may enter a decree  
24 requiring winding up of a filing entity's business and termination  
25 of the filing entity's existence if, as the result of an action  
26 brought under Section 11.303, the court finds that one or more of  
27 the following problems exist:



1           (1) the filing entity or its organizers did not comply  
2 with a condition precedent to its formation;

3           (2) the certificate of formation of the filing entity  
4 or any amendment to the certificate of formation was fraudulently  
5 filed;

6           (3) a misrepresentation of a material matter has been  
7 made in an application, report, affidavit, or other document  
8 submitted by the filing entity under this code;

9           (4) the filing entity has continued to transact  
10 business beyond the scope of the purpose of the filing entity as  
11 expressed in its certificate of formation; or

12           (5) public interest requires winding up and  
13 termination of the filing entity because:

14           (A) the filing entity has been convicted of a  
15 felony or a high managerial agent of the filing entity has been  
16 convicted of a felony committed in the conduct of the filing  
17 entity's affairs;

18           (B) the filing entity or high managerial agent  
19 has engaged in a persistent course of felonious conduct; and

20           (C) termination is necessary to prevent future  
21 felonious conduct of the same character.

22           (b) Sections 11.302-11.307 do not apply to Subsection  
23 (a)(5). (TBCA 7.01.A, F, G; TLLCA 8.12.A; TNPCA 7.01.A, F, G.)

24           Sec. 11.302. NOTIFICATION OF CAUSE BY SECRETARY OF STATE.

25           (a) The secretary of state shall provide to the attorney general:

26           (1) the name of a filing entity that has given cause  
27 under Section 11.301 for involuntary winding up of the entity's

1 business and termination of the entity's existence; and

2 (2) the facts relating to the cause for the winding up  
3 and termination.

4 (b) When notice is provided under Subsection (a), the  
5 secretary of state shall notify the filing entity of the  
6 circumstances by writing sent to the entity at its registered  
7 office in this state. The notice must state that the secretary of  
8 state has given notice under Subsection (a) and the grounds for the  
9 notification. The secretary of state must record the date a notice  
10 required by this subsection is sent.

11 (c) A court shall accept a certificate issued by the  
12 secretary of state as to the facts relating to the cause for the  
13 winding up and termination and the sending of a notice under  
14 Subsection (b) as prima facie evidence of the facts stated in the  
15 certificate and the sending of the notice. (TBCA 7.02.A, B; TNPCA  
16 7.02.A, B.)

17 Sec. 11.303. FILING OF ACTION BY ATTORNEY GENERAL. The  
18 attorney general shall file an action against a filing entity in the  
19 name of the state seeking termination of the entity's existence if:

20 (1) the filing entity has not cured the problems for  
21 which winding up and termination is sought before the 31st day after  
22 the date the notice under Section 11.302(b) is mailed; and

23 (2) the attorney general determines that cause exists  
24 for the involuntary winding up of a filing entity's business and  
25 termination of the entity's existence under Section 11.301. (TBCA  
26 7.02.C; TNPCA 7.02.C.)

27 Sec. 11.304. CURE BEFORE FINAL JUDGMENT. An action filed by

1 the attorney general under Section 11.303 shall be abated if,  
2 before a district court renders judgment on the action, the filing  
3 entity:

4 (1) cures the problems for which winding up and  
5 termination is sought; and

6 (2) pays the costs of the action. (TBCA 7.02.D; TNPCA  
7 7.02.D.)

8 Sec. 11.305. JUDGMENT REQUIRING WINDING UP AND TERMINATION.

9 If a district court finds in an action brought under this subchapter  
10 that proper grounds exist under Section 11.301(a) for a winding up  
11 of a filing entity's business and termination of the filing entity's  
12 existence, the court shall:

13 (1) make findings to that effect; and

14 (2) subject to Section 11.306, enter a judgment not  
15 earlier than the fifth day after the date the court makes its  
16 findings. (TBCA 7.02.E (part); TNPCA 7.02.E (part).)

17 Sec. 11.306. STAY OF JUDGMENT. (a) If, in an action brought  
18 under this subchapter, a filing entity has proved by a  
19 preponderance of the evidence and obtained a finding that the  
20 problems for which the filing entity has been found guilty were not  
21 wilful or the result of a failure to take reasonable precautions,  
22 the entity may make a sworn application to the court for a stay of  
23 entry of the judgment to allow the filing entity a reasonable  
24 opportunity to cure the problems for which it has been found guilty.  
25 An application made under this subsection must be made not later  
26 than the fifth day after the date the court makes its findings under  
27 Section 11.305.

1 (b) After a filing entity has made an application under  
2 Subsection (a), a court shall stay the entry of the judgment if the  
3 court is reasonably satisfied after considering the application and  
4 evidence offered with respect to the application that the filing  
5 entity:

6 (1) is able and intends in good faith to cure the  
7 problems for which it has been found guilty; and

8 (2) has not applied for the stay without just cause.

9 (c) A court shall stay an entry of judgment under Subsection  
10 (b) for the period the court determines is reasonably necessary to  
11 afford the filing entity the opportunity to cure its problems if the  
12 entity acts with reasonable diligence. The court may not stay the  
13 entry of the judgment for longer than 60 days after the date the  
14 court's findings are made.

15 (d) The court shall dismiss an action against a filing  
16 entity that, during the period the action is stayed by the court  
17 under this section, cures the problems for which winding up and  
18 termination is sought and pays all costs accrued in the action.

19 (e) If a court finds that a filing entity has not cured the  
20 problems for which winding up and termination is sought within the  
21 period prescribed by Subsection (c), the court shall enter final  
22 judgment requiring a winding up of the filing entity's business.  
23 (TBCA 7.02.E (part); TLLCA 8.12.A; TNPCA 7.02.E (part).)

24 Sec. 11.307. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF  
25 FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a  
26 trial court's findings against a filing entity under this  
27 subchapter shall remand the case to the trial court with

1 instructions to grant the filing entity an opportunity to cure the  
2 problems for which the entity has been found guilty if:

3 (1) the filing entity did not make an application to  
4 the trial court for stay of the entry of the judgment;

5 (2) the appellate court is satisfied that the appeal  
6 was taken in good faith and not for purpose of delay or with no  
7 sufficient cause;

8 (3) the appellate court finds that the problems for  
9 which the filing entity has been found guilty are capable of being  
10 cured; and

11 (4) the filing entity has prayed for the opportunity  
12 to cure its problems in the appeal.

13 (b) The appellate court shall determine the period, which  
14 may not be longer than 60 days after the date the case is remanded to  
15 the trial court, to be afforded to a filing entity to enable the  
16 filing entity to cure its problems under Subsection (a).

17 (c) The trial court to which an action against a filing  
18 entity has been remanded under this section shall dismiss the  
19 action if, during the period prescribed by the appellate court for  
20 that conduct, the filing entity cures the problems for which  
21 winding up and termination is sought and pays all costs accrued in  
22 the action.

23 (d) If a filing entity has not cured the problems for which  
24 winding up and termination is sought within the period prescribed  
25 by the appellate court under Subsection (b), the judgment requiring  
26 winding up and termination shall become final. (TBCA 7.02.F; TLLCA  
27 8.12.A; TNPCA 7.02.F.)

1           Sec. 11.308. JURISDICTION AND VENUE. (a) The attorney  
2 general shall bring an action for the involuntary winding up and  
3 termination of a filing entity under this subchapter in:

4           (1) a district court of the county in which the  
5 registered office or principal place of business of the filing  
6 entity in this state is located; or

7           (2) a district court of Travis County.

8           (b) A district court described by Subsection (a) has  
9 jurisdiction of the action for involuntary winding up and  
10 termination. (TBCA 7.03 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

11          Sec. 11.309. PROCESS IN STATE ACTION. Citation in an action  
12 for the involuntary winding up and termination of a filing entity  
13 under this subchapter shall be issued and served as provided by law.  
14 (TBCA 7.03 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

15          Sec. 11.310. PUBLICATION OF NOTICE. (a) If process in an  
16 action under this subchapter is returned not found, the attorney  
17 general shall publish notice in a newspaper in the county in which  
18 the registered office of the filing entity in this state is located.  
19 The notice must contain:

20           (1) a statement of the pendency of the action;

21           (2) the title of the court;

22           (3) the title of the action; and

23           (4) the earliest date on which default judgment may be  
24 entered by the court.

25          (b) Notice under this section must be published at least  
26 once a week for two consecutive weeks beginning at any time after  
27 the citation has been returned.

1           (c) The attorney general may include in one published notice  
2 the name of each filing entity against which an action for  
3 involuntary winding up and termination is pending in the same  
4 court.

5           (d) Not later than the 10th day after the date notice under  
6 this section is first published, the attorney general shall send a  
7 copy of the notice to the filing entity at the filing entity's  
8 registered office in this state. A certificate from the attorney  
9 general regarding the sending of the notice is prima facie evidence  
10 that notice was sent under this section.

11           (e) Unless a filing entity has been served with citation, a  
12 default judgment may not be taken against the entity before the 31st  
13 day after the date the notice is first published. (TBCA 7.03  
14 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

15           Sec. 11.311. ACTION ALLOWED AFTER EXPIRATION OF FILING  
16 ENTITY'S DURATION. The expiration of a filing entity's period of  
17 duration does not, by itself, create a vested right on the part of  
18 an owner or creditor of the filing entity to prevent an action by  
19 the attorney general for the involuntary winding up of the filing  
20 entity's business and termination of the filing entity's existence.  
21 (TBCA 7.12.E (part); TLLCA 8.12.A; TNPCA 7.12.G (part).)

22           Sec. 11.312. COMPLIANCE BY TERMINATED ENTITY. On the decree  
23 of a court requiring winding up of a filing entity's business, the  
24 filing entity shall comply with:

25                   (1) the requirements of the decree concerning the  
26 winding up process; and

27                   (2) Subchapter B to the extent it does not conflict

1 with the decree. (New.)

2           Sec. 11.313. TIMING OF TERMINATION. A court may enter a  
3 decree under Section 11.301 terminating the existence of a filing  
4 entity:

5                   (1) when the court considers it necessary or  
6 advisable; or

7                   (2) on completion of the winding up process. (TBCA  
8 7.09.)

9           Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF  
10 PARTNERSHIP OR LIMITED LIABILITY COMPANY. A district court in the  
11 county in which the registered office or principal place of a  
12 domestic partnership or limited liability company is located has  
13 jurisdiction to order the winding up and termination of the  
14 domestic partnership or limited liability company on application  
15 by:

16                   (1) a partner in the partnership if the court  
17 determines that:

18                           (A) the economic purpose of the partnership is  
19 likely to be unreasonably frustrated; or

20                           (B) another partner has engaged in conduct  
21 relating to the partnership's business that makes it not reasonably  
22 practicable to carry on the business in partnership with that  
23 partner; or

24                   (2) an owner of the partnership or limited liability  
25 company if the court determines that it is not reasonably  
26 practicable to carry on the entity's business in conformity with  
27 its governing documents. (TLLCA 6.02; TRLPA 8.02; TRPA 8.01(e).)



1           Sec. 11.315. FILING OF DECREE OF TERMINATION AGAINST FILING  
2 ENTITY. (a) The clerk of a court that enters a decree terminating  
3 the existence of a filing entity shall file a certified copy of the  
4 decree in accordance with Chapter 4.

5           (b) A fee may not be charged for the filing of a decree under  
6 this section. (TBCA 7.10; TLLCA 8.12.A; TNPCA 7.10.)

7           [Sections 11.316-11.350 reserved for expansion]

8           SUBCHAPTER H. CLAIMS RESOLUTION ON TERMINATION

9           Sec. 11.351. LIABILITY OF TERMINATED FILING ENTITY. A  
10 terminated filing entity is liable only for an existing claim.  
11 (TBCA 7.12.C (part); TLLCA 8.12.A; TNPCA 7.12.C (part).)

12           Sec. 11.352. DEPOSIT WITH COMPTROLLER OF AMOUNT DUE OWNERS  
13 AND CREDITORS WHO ARE UNKNOWN OR CANNOT BE LOCATED. (a) On the  
14 voluntary or involuntary termination of a domestic filing entity,  
15 the portion of the entity's assets distributable to creditors or  
16 owners who are unknown or cannot be found after the exercise of  
17 reasonable diligence by a person responsible for the distribution  
18 in liquidation of the domestic filing entity's assets must be  
19 reduced to cash and deposited as provided by Subsection (b).

20           (b) Money from assets liquidated under Subsection (a) shall  
21 be deposited with the comptroller in a special account to be  
22 maintained by the comptroller. The money must be accompanied by a  
23 statement to the comptroller containing:

24           (1) the name and last known address of each person who  
25 is known to be entitled to all or part of the account;

26           (2) the amount of each entitled person's distributive  
27 portion of the money; and

1           (3) other information about each person who is  
2 entitled to all or part of the money as the comptroller may  
3 reasonably require.

4           (c) The comptroller shall issue a receipt for money received  
5 under this section. (TBCA 7.11.A (part); TLLCA 8.12.A; TNPCA 7.11.A  
6 (part).)

7           Sec. 11.353. DISCHARGE OF LIABILITY OF PERSON RESPONSIBLE  
8 FOR LIQUIDATION. A person responsible for the distribution in  
9 liquidation of a filing entity's assets will be released and  
10 discharged from further liability with respect to money received  
11 from the liquidation when the person deposits the money with the  
12 comptroller under Section 11.352. (TBCA 7.11.A (part); TLLCA  
13 8.12.A; TNPCA 7.11.A (part).)

14           Sec. 11.354. PAYMENT FROM ACCOUNT BY COMPTROLLER. (a) To  
15 claim money deposited in an account under Section 11.352, a person  
16 must submit to the comptroller satisfactory written proof of the  
17 person's right to the money not later than the seventh anniversary  
18 of the date the money was deposited with the comptroller.

19           (b) The comptroller shall issue a warrant drawn on the  
20 account created under Section 11.352 in favor of a person who meets  
21 the requirements for making a claim under Subsection (a) and in the  
22 amount to which the person is entitled. (TBCA 7.11.B (part); TLLCA  
23 8.12.A; TNPCA 7.11.B (part).)

24           Sec. 11.355. NOTICE OF ESCHEAT; ESCHEAT. (a) If no claimant  
25 has made satisfactory proof of a right to the money within the  
26 period prescribed by Section 11.354(a), the comptroller shall  
27 publish in one issue of a newspaper of general circulation in Travis

1 County a notice of the proposed escheat of the money.

2 (b) A notice published under Subsection (a) must contain:

3 (1) the name and last known address of any known  
4 creditor or owner entitled to the money;

5 (2) the amount of money deposited with the  
6 comptroller; and

7 (3) the name of the terminated filing entity from  
8 whose assets the money was derived.

9 (c) If no claimant makes satisfactory proof to the  
10 comptroller of a right to the money before the 61st day after the  
11 date notice under this section is published, the money  
12 automatically escheats to and becomes the property of the state and  
13 shall be deposited in the general revenue fund. (TBCA 7.11.B  
14 (part); TLLCA 8.12.A; TNPCA 7.11.B (part).)

15 Sec. 11.356. LIMITED SURVIVAL AFTER TERMINATION. (a)  
16 Notwithstanding the termination of a domestic filing entity under  
17 this chapter, the terminated filing entity continues in existence  
18 until the third anniversary of the effective date of the entity's  
19 termination only for purposes of:

20 (1) prosecuting or defending in the terminated filing  
21 entity's name an action or proceeding brought by or against the  
22 terminated entity;

23 (2) permitting the survival of an existing claim by or  
24 against the terminated filing entity;

25 (3) holding title to and liquidating property that  
26 remained with the terminated filing entity at the time of  
27 termination or property that is collected by the terminated filing

1 entity after termination;

2 (4) applying or distributing property, or its  
3 proceeds, as provided by Section 11.053; and

4 (5) settling affairs not completed before  
5 termination.

6 (b) A terminated filing entity may not continue its  
7 existence for the purpose of continuing the business or affairs for  
8 which the terminated filing entity was formed unless the terminated  
9 filing entity is reinstated under Subchapter E.

10 (c) If an action on an existing claim by or against a  
11 terminated filing entity has been brought before the expiration of  
12 the three-year period after the date of the entity's termination  
13 and the claim was not extinguished under Section 11.359, the  
14 terminated filing entity continues to survive for purposes of:

15 (1) the action until all judgments, orders, and  
16 decrees have been fully executed; and

17 (2) the application or distribution of any property of  
18 the terminated filing entity as provided by Section 11.053 until  
19 the property has been applied or distributed. (TBCA 7.12.A, C  
20 (part); TLLCA 8.12.A; TNPCA 7.12.A, C (part).)

21 Sec. 11.357. GOVERNING PERSONS OF ENTITY DURING LIMITED  
22 SURVIVAL. (a) Subject to the provisions of the title governing the  
23 terminated filing entity, during the three-year period that a  
24 terminated filing entity's existence is continued under Section  
25 11.356, the governing persons of the terminated filing entity  
26 serving at the time of termination shall continue to manage the  
27 affairs of the terminated filing entity for the limited purposes

1 specified by Section 11.356 and have the powers necessary to  
2 accomplish those purposes. The number of governing persons:

3 (1) may be reduced because of the death of a governing  
4 person; and

5 (2) may include successors to governing persons chosen  
6 by the other governing persons.

7 (b) In exercising powers prescribed under Subsection (a), a  
8 governing person:

9 (1) has the same duties to the terminated filing  
10 entity that the person had immediately before the termination; and

11 (2) is liable to the terminated filing entity for the  
12 person's actions taken after the entity's termination to the same  
13 extent that the person would have been liable had the person taken  
14 those actions before the termination. (TBCA 7.12.B; TLLCA 8.12.A;  
15 TNPCA 7.12.B.)

16 Sec. 11.358. ACCELERATED PROCEDURE FOR EXISTING CLAIM  
17 RESOLUTION. (a) A terminated filing entity may shorten the period  
18 for resolving a person's existing claim against the entity by  
19 giving notice by registered or certified mail, return receipt  
20 requested, to the claimant at the claimant's last known address  
21 that the claim must be resolved under this section.

22 (b) The notice required under Subsection (a) must:

23 (1) state the requirements of Subsections (c) and (d)  
24 for presenting a claim;

25 (2) provide the mailing address to which the person's  
26 claim against the terminated filing entity must be sent;

27 (3) state that the claim will be extinguished if

1 written presentation of the claim is not received at the address  
2 given on or before the date specified in the notice, which may not  
3 be earlier than the 120th day after the date the notice is mailed to  
4 the person by the terminated filing entity; and

5 (4) be accompanied by a copy of this section.

6 (c) To assert a claim, a person who is notified by a  
7 terminated filing entity that the person's claim must be resolved  
8 under this section must present the claim in writing to the  
9 terminated filing entity at the address given by the entity in the  
10 notice.

11 (d) A claim presented under Subsection (c) must:

12 (1) contain the:

13 (A) identity of the claimant; and

14 (B) nature and amount of the claim; and

15 (2) be received by the terminated filing entity not  
16 later than the date specified in the notice under Subsection  
17 (b)(3).

18 (e) If a person presents a claim that meets the requirements  
19 of this section, the terminated filing entity to whom the claim is  
20 presented may give written notice to the person that the claim is  
21 rejected by the terminated entity.

22 (f) Notice under Subsection (e) must:

23 (1) be sent by registered or certified mail, return  
24 receipt requested, and addressed to the last known address of the  
25 person presenting the claim;

26 (2) state that the claim has been rejected by the  
27 terminated entity;

1           (3) state that the claim will be extinguished unless  
2 an action on the claim is brought:

3           (A) not later than the 180th day after the date  
4 the notice of rejection of the claim was mailed to the person; and

5           (B) not later than the third anniversary of the  
6 effective date of the entity's termination; and

7           (4) state the date on which notice of the claim's  
8 rejection was mailed and the effective date of the entity's  
9 termination. (TBCA 7.12.D (part); TLLCA 8.12.A; TNPCA 7.12.D, E.)

10           Sec. 11.359. EXTINGUISHMENT OF EXISTING CLAIM. (a) Except  
11 as provided by Subsection (b), an existing claim by or against a  
12 terminated filing entity is extinguished unless an action or  
13 proceeding is brought on the claim not later than the third  
14 anniversary of the date of termination of the entity.

15           (b) A person's claim against a terminated filing entity may  
16 be extinguished before the period prescribed by Subsection (a) if  
17 the person is notified under Section 11.358(a) that the claim will  
18 be resolved under Section 11.358 and the person:

19           (1) fails to properly present the claim in writing  
20 under Sections 11.358(c) and (d); or

21           (2) fails to bring an action on a claim rejected under  
22 Section 11.358(e) before:

23           (A) the 180th day after the date the notice  
24 rejecting the claim was mailed to the person; and

25           (B) the third anniversary of the effective date  
26 of the entity's termination. (TBCA 7.12.C (part), D (part); TLLCA  
27 8.12.A; TNPCA 7.12.C (part), F.)

1 [Sections 11.360-11.400 reserved for expansion]

2 SUBCHAPTER I. RECEIVERSHIP

3 Sec. 11.401. CODE GOVERNS. A receiver may be appointed for a  
4 domestic entity or for a domestic entity's property or business  
5 only as provided for and on the conditions set forth in this code.  
6 (TBCA 7.07.A (part); TLLCA 8.12.A; TNPCA 7.07.A (part).)

7 Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) A court  
8 that has subject matter jurisdiction over specific property of a  
9 domestic or foreign entity that is located in this state and is  
10 involved in litigation has jurisdiction to appoint a receiver for  
11 that property.

12 (b) A district court in the county in which the registered  
13 office or principal place of business of a domestic entity is  
14 located has jurisdiction to:

15 (1) appoint a receiver for the property and business  
16 of a domestic entity for the purpose of rehabilitating the entity;  
17 or

18 (2) order the liquidation of the property and business  
19 of a domestic entity and appoint a receiver to effect that  
20 liquidation. (TBCA 7.04.A (part), 7.05.A (part), 7.06.A (part);  
21 TLLCA 8.12.A; TNPCA 7.04.A (part), 7.05.A (part), 7.06.A (part).)

22 Sec. 11.403. APPOINTMENT OF RECEIVER FOR SPECIFIC PROPERTY.

23 (a) Subject to Subsection (b), and on the application of a person  
24 whose right to or interest in any property or fund or the proceeds  
25 from the property or fund is probable, a court that has jurisdiction  
26 over specific property of a domestic or foreign entity may appoint a  
27 receiver in an action:



1           (1) by a vendor to vacate a fraudulent purchase of the  
2 property;

3           (2) by a creditor to subject the property or fund to  
4 the creditor's claim;

5           (3) between partners or others jointly owning or  
6 interested in the property or fund;

7           (4) by a mortgagee of the property for the foreclosure  
8 of the mortgage and sale of the property, when:

9           (A) it appears that the mortgaged property is in  
10 danger of being lost, removed, or materially injured; or

11           (B) it appears that the mortgage is in default  
12 and that the property is probably insufficient to discharge the  
13 mortgage debt; or

14           (5) in which receivers for specific property have been  
15 previously appointed by courts of equity.

16           (b) A court may appoint a receiver for the property or fund  
17 under Subsection (a) only if:

18           (1) with respect to an action brought under Subsection  
19 (a)(1), (2), or (3), it is shown that the property or fund is in  
20 danger of being lost, removed, or materially injured;

21           (2) circumstances exist that are considered by the  
22 court to necessitate the appointment of a receiver to conserve the  
23 property or fund and avoid damage to interested parties;

24           (3) all other requirements of law are complied with;  
25 and

26           (4) the court determines that other available legal  
27 and equitable remedies are inadequate.

1           (c) The court appointing a receiver under this section has  
2 and shall retain exclusive jurisdiction over the specific property  
3 placed in receivership. The court shall determine the rights of the  
4 parties in the property or its proceeds.

5           (d) If the condition necessitating the appointment of a  
6 receiver under this section is remedied, the receivership shall be  
7 terminated immediately, and the receiver shall redeliver to the  
8 domestic entity all of the property remaining in receivership.  
9 (TBCA 7.04; TLLCA 8.12.A; TNPCA 7.04.)

10           Sec. 11.404. APPOINTMENT OF RECEIVER TO REHABILITATE  
11 DOMESTIC ENTITY. (a) Subject to Subsection (b), a court that has  
12 jurisdiction over the property and business of a domestic entity  
13 under Section 11.402(b) may appoint a receiver for the entity's  
14 property and business if:

15                   (1) in an action by an owner or member of the domestic  
16 entity, it is established that:

17                           (A) the entity is insolvent or in imminent danger  
18 of insolvency;

19                           (B) the governing persons of the entity are  
20 deadlocked in the management of the entity's affairs, the owners or  
21 members of the entity are unable to break the deadlock, and  
22 irreparable injury to the entity is being suffered or is threatened  
23 because of the deadlock;

24                           (C) the actions of the governing persons of the  
25 entity are illegal, oppressive, or fraudulent;

26                           (D) the property of the entity is being  
27 misapplied or wasted; or

1 (E) with respect to a for-profit corporation, the  
2 shareholders of the entity are deadlocked in voting power and have  
3 failed, for a period of at least two years, to elect successors to  
4 the governing persons of the entity whose terms have expired or  
5 would have expired on the election and qualification of their  
6 successors;

7 (2) in an action by a creditor of the domestic entity,  
8 it is established that:

9 (A) the entity is insolvent, the claim of the  
10 creditor has been reduced to judgment, and an execution on the  
11 judgment was returned unsatisfied; or

12 (B) the entity is insolvent and has admitted in  
13 writing that the claim of the creditor is due and owing; or

14 (3) in an action other than an action described by  
15 Subdivision (1) or (2), courts of equity have traditionally  
16 appointed a receiver.

17 (b) A court may appoint a receiver under Subsection (a) only  
18 if:

19 (1) circumstances exist that are considered by the  
20 court to necessitate the appointment of a receiver to conserve the  
21 property and business of the domestic entity and avoid damage to  
22 interested parties;

23 (2) all other requirements of law are complied with;  
24 and

25 (3) the court determines that all other available  
26 legal and equitable remedies, including the appointment of a  
27 receiver for specific property of the domestic entity under Section

1 11.402, are inadequate.

2 (c) If the condition necessitating the appointment of a  
3 receiver under this section is remedied, the receivership shall be  
4 terminated immediately, the management of the domestic entity shall  
5 be restored to its managerial officials, and the receiver shall  
6 redeliver to the domestic entity all of its property remaining in  
7 receivership. (TBCA 7.05; TLLCA 8.12.A; TNPCA 7.05.)

8 Sec. 11.405. APPOINTMENT OF RECEIVER TO LIQUIDATE DOMESTIC  
9 ENTITY; LIQUIDATION. (a) Subject to Subsection (b), a court that  
10 has jurisdiction over the property and business of a domestic  
11 entity under Section 11.402(b) may order the liquidation of the  
12 property and business of the domestic entity and may appoint a  
13 receiver to effect the liquidation:

14 (1) when an action has been filed by the attorney  
15 general under this chapter to terminate the existence of the entity  
16 and it is established that liquidation of the entity's business and  
17 affairs should precede the entry of a decree of termination;

18 (2) on application of the entity to have its  
19 liquidation continued under the supervision of the court;

20 (3) if the entity is in receivership and the court does  
21 not find that any plan presented before the first anniversary of the  
22 date the receiver was appointed is feasible for remedying the  
23 condition requiring appointment of the receiver;

24 (4) on application of a creditor of the entity if it is  
25 established that irreparable damage will ensue to the unsecured  
26 creditors of the domestic entity as a class, generally, unless  
27 there is an immediate liquidation of the property of the domestic

1 entity; or

2 (5) on application of a member or director of a  
3 nonprofit corporation or cooperative association and it appears the  
4 entity is unable to carry out its purposes.

5 (b) A court may order a liquidation and appoint a receiver  
6 under Subsection (a) only if:

7 (1) the circumstances demand liquidation to avoid  
8 damage to interested persons;

9 (2) all other requirements of law are complied with;  
10 and

11 (3) the court determines that all other available  
12 legal and equitable remedies, including the appointment of a  
13 receiver for specific property of the domestic entity and  
14 appointment of a receiver to rehabilitate the domestic entity, are  
15 inadequate.

16 (c) If the condition necessitating the appointment of a  
17 receiver under this section is remedied, the receivership shall be  
18 terminated immediately, the management of the domestic entity shall  
19 be restored to its managerial officials, and the receiver shall  
20 redeliver to the domestic entity all of its property remaining in  
21 receivership. (TBCA 7.06; TLLCA 8.12.A; TNPCA 7.06.A, C.)

22 Sec. 11.406. RECEIVERS: QUALIFICATIONS, POWERS, AND  
23 DUTIES. (a) A receiver appointed under this chapter:

24 (1) must be an individual citizen of the United States  
25 or an entity authorized to act as receiver;

26 (2) shall give a bond in the amount required by the  
27 court and with any sureties as may be required by the court;

1           (3) may sue and be sued in the receiver's name in any  
2 court;

3           (4) has the powers and duties provided by other laws  
4 applicable to receivers; and

5           (5) has the powers and duties that are stated in the  
6 order appointing the receiver or that the appointing court:

7           (A) considers appropriate to accomplish the  
8 objectives for which the receiver was appointed; and

9           (B) may increase or diminish at any time during  
10 the proceedings.

11           (b) To be appointed a receiver under this chapter, a foreign  
12 entity must be registered to transact business in this state. (TBCA  
13 7.07.A (part), B; TLLCA 8.12.A; TNPCA 7.07.A (part), B.)

14           Sec. 11.407. COURT-ORDERED FILING OF CLAIMS. (a) In a  
15 proceeding involving a receivership of the property or business of  
16 a domestic entity, the court may require all claimants of the  
17 domestic entity to file with the clerk of the court or the receiver,  
18 in the form provided by the court, proof of their respective claims  
19 under oath.

20           (b) A court that orders the filing of claims under  
21 Subsection (a) shall:

22           (1) set a date, which may not be earlier than four  
23 months after the date of the order, as the last day for the filing of  
24 those claims; and

25           (2) prescribe the notice that shall be given to  
26 claimants of the date set under Subdivision (1).

27           (c) Before the expiration of the period under Subsection (b)

1 for the filing of claims, a court may extend the period for the  
2 filing of claims to a later date.

3 (d) A court may bar a claimant who fails to file a proof of  
4 claim during the period authorized by the court from participating  
5 in the distribution of the property of the domestic entity unless  
6 the claimant presents to the court a justifiable excuse for its  
7 delay in filing. A court may not order or effect a discharge of a  
8 claim of the claimant described by this subsection. (TBCA 7.07.C;  
9 TLLCA 8.12.A; TNPCA 7.07.C.)

10 Sec. 11.408. SUPERVISING COURT; JURISDICTION; AUTHORITY.

11 (a) A court supervising a receivership under this subchapter may,  
12 from time to time:

13 (1) make allowances to a receiver or attorney in the  
14 proceeding; and

15 (2) direct the payment of a receiver or attorney from  
16 the property of the domestic entity that is within the scope of the  
17 receivership or the proceeds of any sale or disposition of that  
18 property.

19 (b) A court that appoints a receiver under this subchapter  
20 for the property or business of a domestic entity has exclusive  
21 jurisdiction over the domestic entity and all of its property,  
22 regardless of where the property is located. (TBCA 7.07.D, E; TLLCA  
23 8.12.A; TNPCA 7.07.D, E.)

24 Sec. 11.409. ANCILLARY RECEIVERSHIPS OF FOREIGN ENTITIES.

25 (a) Notwithstanding any provision of this code to the contrary, a  
26 district court in the county in which the registered office of a  
27 foreign entity doing business in this state is located has

1 jurisdiction to appoint an ancillary receiver for the property and  
2 business of that entity when the court determines that  
3 circumstances exist to require the appointment of an ancillary  
4 receiver.

5 (b) A receiver appointed under Subsection (a) serves  
6 ancillary to a receiver acting under orders of an out-of-state  
7 court that has jurisdiction to appoint a receiver for the entity.  
8 (TBCA 7.07.F (part); TLLCA 8.12.A; TNPCA 7.07.F (part).)

9 Sec. 11.410. RECEIVERSHIP FOR ALL PROPERTY AND BUSINESS OF  
10 FOREIGN ENTITY. (a) A district court may appoint a receiver for all  
11 of the property, in and outside this state, of a foreign entity  
12 doing business in this state and its business if the court  
13 determines, in accordance with the ordinary usages of equity, that  
14 circumstances exist that necessitate the appointment of a receiver  
15 even if a receiver has not been appointed by another court.

16 (b) The appointing court shall convert a receivership  
17 created under Subsection (a) into an ancillary receivership if the  
18 appointing court determines an ancillary receivership is  
19 appropriate because a court in another state has ordered a  
20 receivership of all property and business of the entity. (TBCA  
21 7.07.F (part); TLLCA 8.12.A; TNPCA 7.07.F (part).)

22 Sec. 11.411. GOVERNING PERSONS AND OWNERS NOT NECESSARY  
23 PARTIES DEFENDANT. Governing persons and owners or members of a  
24 domestic entity are not necessary parties to an action for a  
25 receivership or liquidation of the property and business of a  
26 domestic entity unless relief is sought against those persons  
27 individually. (TBCA 7.08; TLLCA 8.12.A; TNPCA 7.08.)



1           Sec. 11.412. DECREE OF INVOLUNTARY TERMINATION. In an  
2 action to liquidate the property and business of a domestic entity,  
3 the court shall enter a decree terminating the entity and the  
4 existence of the entity shall cease;

5           (1) when the costs and expenses of the action and all  
6 obligations and liabilities of the domestic entity have been paid  
7 and discharged or adequately provided for and all of the entity's  
8 remaining property has been distributed to its owners and members;  
9 or

10           (2) if the entity's property is not sufficient to  
11 discharge the costs and other expenses of the action and all  
12 obligations and liabilities of the entity, when all the property of  
13 the entity has been applied toward their payment. (TBCA 7.09; TLLCA  
14 8.12.A; TNPCA 7.09.)

15           Sec. 11.413. SUPPLEMENTAL PROVISIONS FOR APPLICATION OF  
16 PROCEEDS FROM LIQUIDATION OF NONPROFIT CORPORATION. (a) In  
17 proceedings under Section 11.405, the property of a nonprofit  
18 corporation or the proceeds resulting from a sale, conveyance, or  
19 other disposition of its property shall be applied to:

20           (1) pay, satisfy, and discharge all costs and expenses  
21 of the court proceedings and all liabilities and obligations of the  
22 nonprofit corporation; or

23           (2) make adequate provision for the payment,  
24 satisfaction, and discharge of the costs, expenses, liabilities, or  
25 obligations described by Subdivision (1).

26           (b) Any property remaining after application is made under  
27 this section must be applied and distributed in the manner provided

1 by Section 22.304. (TNPCA 7.06.B.)

2 CHAPTER 12. ADMINISTRATIVE POWERS

3 SUBCHAPTER A. SECRETARY OF STATE

4 Sec. 12.001. AUTHORITY OF SECRETARY OF STATE. (a) The  
5 secretary of state may adopt procedural rules for the filing of  
6 instruments, including the filing of instruments by electronic or  
7 other means, authorized to be filed with the secretary of state  
8 under this code.

9 (b) The secretary of state has the power and authority  
10 reasonably necessary to enable the secretary to perform the duties  
11 imposed on the secretary under this code. (TBCA 9.03; TLLCA 8.03;  
12 TNPCA 9.04; TRPA 3.08(b)(15), 10.02(n); TMCLA 7.07.A (part).)

13 Sec. 12.002. INTERROGATORIES BY SECRETARY OF STATE. (a) As  
14 necessary and proper for the secretary of state to determine  
15 whether a filing entity or a foreign filing entity has complied with  
16 this code, the secretary of state may serve by mail interrogatories  
17 on the entity or a managerial official.

18 (b) An entity or individual to whom an interrogatory is sent  
19 by the secretary of state shall answer the interrogatory before the  
20 later of the 31st day after the date the interrogatory is mailed or  
21 a date set by the secretary of state. Each answer to an  
22 interrogatory must be complete, in writing, and under oath. An  
23 interrogatory directed to an individual shall be answered by the  
24 individual, and an interrogatory directed to an entity shall be  
25 answered by a managerial official.

26 (c) The secretary of state is not required to file any  
27 instrument to which an interrogatory relates until the

1 interrogatory is answered as provided by this section and only if  
2 the instrument conforms to the requirements of this code. The  
3 secretary of state shall certify to the attorney general for action  
4 as the attorney general may consider appropriate an interrogatory  
5 and answer to the interrogatory that disclose a violation of this  
6 code.

7 (d) This section and Sections 12.003 and 12.004 do not apply  
8 to domestic real estate investment trusts. (TBCA 9.01; TLLCA  
9 8.01.)

10 Sec. 12.003. INFORMATION DISCLOSED BY INTERROGATORIES. An  
11 interrogatory sent by the secretary of state and the answer to the  
12 interrogatory are subject to Chapter 552, Government Code. (TBCA  
13 9.02; TLLCA 8.02.)

14 Sec. 12.004. APPEALS FROM SECRETARY OF STATE. (a) If the  
15 secretary of state does not approve the filing of a filing  
16 instrument, the secretary of state shall, before the 11th day after  
17 the date of the delivery of the filing instrument to the secretary  
18 of state, notify the person delivering the filing instrument of the  
19 disapproval and specifying each reason for the disapproval. The  
20 disapproval of a filing instrument by the secretary of state may be  
21 appealed only to a district court of Travis County by filing with  
22 the court clerk a petition, a copy of the filing instrument sought  
23 to be filed, and a copy of any written disapproval by the secretary  
24 of state of the filing instrument. The court shall try the appeal  
25 de novo and shall sustain the action of the secretary of state or  
26 direct the secretary to take any action the court considers to be  
27 proper.

1 (b) A final order or judgment entered by the district court  
2 under this section in review of any ruling or decision of the  
3 secretary of state may be appealed as in other civil actions. (TBCA  
4 9.04.A; TLLCA 8.04; TNPCA 9.05.)

5 [Sections 12.005-12.150 reserved for expansion]

6 SUBCHAPTER B. ATTORNEY GENERAL

7 Sec. 12.151. AUTHORITY OF ATTORNEY GENERAL TO EXAMINE BOOKS  
8 AND RECORDS. Each filing entity and foreign filing entity shall  
9 permit the attorney general to inspect, examine, and make copies,  
10 as the attorney general considers necessary in the performance of a  
11 power or duty of the attorney general, of any record of the entity.  
12 A record of the entity includes minutes and a book, account, letter,  
13 memorandum, document, check, voucher, telegram, constitution, and  
14 bylaw. (TMCLA 5.01.)

15 Sec. 12.152. REQUEST TO EXAMINE. To examine the business of  
16 a filing entity or foreign filing entity, the attorney general  
17 shall make a written request to a managerial official, who shall  
18 immediately permit the attorney general to inspect, examine, and  
19 make copies of the records of the entity. (TMCLA 5.02, 5.03.)

20 Sec. 12.153. AUTHORITY TO EXAMINE MANAGEMENT OF ENTITY. The  
21 attorney general may investigate the organization, conduct, and  
22 management of a filing entity or foreign filing entity and  
23 determine if the entity has been or is engaged in acts or conduct in  
24 violation of:

25 (1) its governing documents; or

26 (2) any law of this state. (TMCLA 5.03.)

27 Sec. 12.154. AUTHORITY TO DISCLOSE INFORMATION.

1 Information held by the attorney general and derived in the course  
2 of an examination of an entity's records or documents is not public  
3 information, is not subject to Chapter 552, Government Code, and  
4 may not be disclosed except:

5 (1) in the course of an administrative or judicial  
6 proceeding in which the state is a party;

7 (2) in a suit by the state to:

8 (A) revoke the registration of the foreign filing  
9 entity or terminate the certificate of formation of the filing  
10 entity; or

11 (B) collect penalties for a violation of the law  
12 of this state; or

13 (3) to provide information to any officer of this  
14 state charged with the enforcement of its laws. (TMCLA 5.04.)

15 Sec. 12.155. FORFEITURE OF BUSINESS PRIVILEGES. A foreign  
16 filing entity or a filing entity that fails or refuses to permit the  
17 attorney general to examine or make copies of a record, without  
18 regard to whether the record is located in this or another state,  
19 forfeits the right of the entity to do business in this state, and  
20 the entity's registration or certificate of formation shall be  
21 revoked or terminated. (TMCLA 5.05.A.)

22 Sec. 12.156. CRIMINAL PENALTY. (a) A managerial official  
23 or other individual having the authority to manage the affairs of a  
24 filing entity or foreign filing entity commits an offense if the  
25 official or individual fails or refuses to permit the attorney  
26 general to make an investigation of the entity or to examine or to  
27 make copies of a record of the entity.

1 (b) An offense under this section is a Class B misdemeanor.  
2 (TMCLA 5.05.B.)

3 [Sections 12.157-12.200 reserved for expansion]

4 SUBCHAPTER C. ENFORCEMENT LIEN

5 Sec. 12.201. LIEN FOR LAW VIOLATIONS. (a) If a filing  
6 entity or foreign filing entity violates a law of this state,  
7 including the law against trusts, monopolies, and conspiracies, or  
8 combinations or contracts in restraint of trade, for the violation  
9 of which a fine, penalties, or forfeiture is provided, all of the  
10 entity's property in this state at the time of the violation or that  
11 after the violation comes into this state is, because of the  
12 violation, liable for any fine or penalty under this chapter and for  
13 costs of suit and costs of collection.

14 (b) The state has a lien on all property of a filing entity  
15 or foreign filing entity in this state on the date a suit is  
16 instituted by or under the direction of the attorney general in a  
17 court of this state for the purpose of forfeiting the certificate of  
18 formation or revoking the registration of the entity or for the  
19 collection of a fine or penalty due to the state.

20 (c) The filing of a suit for a fine, penalties, or  
21 forfeiture is notice of the lien.

22 (d) In addition to the property subjected to the lien under  
23 Subsection (b), the lien applies to any property that comes into the  
24 possession of a receiver appointed under Subchapter D. (TMCLA 5.07,  
25 5.08, 5.11 (part).)

26 [Sections 12.202-12.250 reserved for expansion]

27 SUBCHAPTER D. ENFORCEMENT PROCEEDINGS

1           Sec. 12.251. RECEIVER. In a suit filed by this state against  
2 a filing entity or foreign filing entity for the termination of the  
3 entity's certificate of formation or registration or for a fine or  
4 penalty, the court in this state in which the suit is pending:

5           (1) shall appoint a receiver for the property and  
6 business of the entity in this state or that subsequently comes into  
7 this state during the receivership if the filing entity or foreign  
8 filing entity commences the process of winding up its business in  
9 this or another state or a judgment is rendered against it in this  
10 or another state for the termination of the entity's certificate of  
11 formation or registration; and

12           (2) may appoint a receiver for the entity if the  
13 interest of the state requires the appointment. (TMCLA 5.10.)

14           Sec. 12.252. FORECLOSURE. (a) The attorney general may  
15 bring suit to foreclose a lien created by this chapter.

16           (b) If a filing entity or a foreign filing entity subject to  
17 this code has commenced the winding up process or has had the  
18 entity's certificate of formation or registration terminated by a  
19 judgment, citation in a suit for foreclosure may be served on any  
20 person in this state who acted and was acting as agent of the entity  
21 in this state when the entity commenced the winding up process or  
22 the entity's certificate of formation or registration was  
23 terminated. (TMCLA 5.12.)

24           Sec. 12.253. ACTION AGAINST INSOLVENT ENTITY. When the  
25 attorney general is convinced that a filing entity or foreign  
26 filing entity is insolvent, the attorney general shall institute  
27 quo warranto or other appropriate proceedings to terminate the

1 certificate of formation or registration of the filing entity or  
2 foreign filing entity that is insolvent. (TMCLA 5.14.)

3 Sec. 12.254. SUITS BY DISTRICT OR COUNTY ATTORNEY. A  
4 district or county attorney shall bring and prosecute a proceeding  
5 under Section 12.252 or 12.253 when directed to do so by the  
6 attorney general. (TMCLA 5.12 (part), 5.15.)

7 Sec. 12.255. PERMISSION TO SUE. Before a petition may be  
8 filed by the attorney general or by a district or county attorney in  
9 a suit authorized by Section 12.252 or 12.253, leave must be granted  
10 by the judge of the court in which the proceeding is to be filed.  
11 (TMCLA 5.17.)

12 Sec. 12.256. EXAMINATION AND NOTICE. (a) The judge of a  
13 court in which a proceeding under Section 12.252 or 12.253 is to be  
14 filed shall carefully examine the petition before granting leave to  
15 sue. The judge may also require an examination into the facts. If  
16 it appears with reasonable certainty from the petition or from the  
17 petition and facts that there is a prima facie showing for the  
18 relief sought, the judge may grant leave to file.

19 (b) On an application for the appointment of a receiver, the  
20 entity proceeded against is entitled to 10 days' notice before the  
21 day set for the hearing. (TMCLA 5.18.)

22 Sec. 12.257. DISMISSAL OF ACTION. (a) A suit authorized by  
23 Section 12.253 or 12.258 may not be filed or, if filed, shall be  
24 dismissed if the entity, through its owners or members, reduces its  
25 indebtedness so that it is not insolvent.

26 (b) The respondent shall pay the costs of a dismissed suit  
27 under this section. (TMCLA 5.16.)



1       Sec. 12.258. LIQUIDATION OF INSOLVENT ENTITY. (a) A court  
2 hearing a proceeding under Section 12.253 against an insolvent  
3 entity may, after the entity has been shown to be insolvent, appoint  
4 one or more receivers for the entity and its property. The receiver  
5 may settle the affairs of the entity, collect outstanding debts,  
6 and divide the money and property belonging to the entity among its  
7 owners after paying the debts of the entity and all expenses  
8 incidental to the judicial proceedings and receivership.

9       (b) The court may continue the existence of the entity for  
10 three years and for additional reasonable time as necessary to  
11 accomplish the purposes of this subchapter. (TMCLA 5.15.)

12       Sec. 12.259. EXTRAORDINARY REMEDIES; BOND. The state has a  
13 right to a writ of attachment, garnishment, sequestration, or  
14 injunction, without bond, to aid in the enforcement of the state's  
15 rights created by this chapter. (TMCLA 5.11 (part).)

16       Sec. 12.260. ABATEMENT OF SUIT. An action or cause of action  
17 for a fine, penalty, or forfeiture that this state has or may have  
18 against a filing entity or foreign filing entity does not abate  
19 because the entity dissolves, voluntarily or otherwise, or the  
20 entity's certificate of formation is terminated or the entity's  
21 registration is revoked. (TMCLA 5.09.)

22       Sec. 12.261. PROVISIONS CUMULATIVE. Each right or remedy  
23 provided by this chapter is cumulative and does not affect any other  
24 right or remedy for the enforcement, payment, or collection of a  
25 fine, forfeiture, or penalty or any other means provided by law for  
26 securing or preserving testimony or inquiring into the rights or  
27 privileges of an entity. (TMCLA 5.06, 5.13, 5.19.)

## TITLE 2. CORPORATIONS

## CHAPTER 20. GENERAL PROVISIONS

1  
2  
3       Sec. 20.001. REQUIREMENT THAT FILING INSTRUMENT BE SIGNED  
4 BY OFFICER. Unless otherwise provided by this title, a filing  
5 instrument of a corporation must be signed by an officer of the  
6 corporation. (TBCA 2.10.B (part), 2.12.C(3) (part), 2.13.E (part),  
7 2.22.E(2) (part), 4.10.B (part), 4.11.B (part), 4.12.B (part);  
8 TNPCA 4.03 (part), 4.06.D (part), 6.05 (part).)

9       Sec. 20.002. ULTRA VIRES ACTS. (a) Lack of capacity of a  
10 corporation may not be the basis of any claim or defense at law or in  
11 equity.

12       (b) An act of a corporation or a transfer of property by or  
13 to a corporation is not invalid because the act or transfer was:

14           (1) beyond the scope of the purpose or purposes of the  
15 corporation as expressed in the corporation's certificate of  
16 formation; or

17           (2) inconsistent with a limitation on the authority of  
18 an officer or director to exercise a statutory power of the  
19 corporation, as that limitation is expressed in the corporation's  
20 certificate of formation.

21       (c) The fact that an act or transfer is beyond the scope of  
22 the expressed purpose or purposes of the corporation or is  
23 inconsistent with an expressed limitation on the authority of an  
24 officer or director may be asserted in a proceeding:

25           (1) by a shareholder or member against the corporation  
26 to enjoin the performance of an act or the transfer of property by  
27 or to the corporation;

1           (2) by the corporation, acting directly or through a  
2 receiver, trustee, or other legal representative, or through  
3 members in a representative suit, against an officer or director or  
4 former officer or director of the corporation for exceeding that  
5 person's authority; or

6           (3) by the attorney general to:

7                   (A) terminate the corporation;

8                   (B) enjoin the corporation from performing an  
9 unauthorized act; or

10                   (C) enforce divestment of real property acquired  
11 or held contrary to the laws of this state.

12           (d) If the unauthorized act or transfer sought to be  
13 enjoined under Subsection (c)(1) is being or is to be performed or  
14 made under a contract to which the corporation is a party and if  
15 each party to the contract is a party to the proceeding, the court  
16 may set aside and enjoin the performance of the contract. The court  
17 may award to the corporation or to another party to the contract, as  
18 appropriate, compensation for loss or damage resulting from the  
19 action of the court in setting aside and enjoining the performance  
20 of the contract, excluding loss of anticipated profits. (TBCA  
21 2.04; TNPCA 2.03.)

## 22                   CHAPTER 21. FOR-PROFIT CORPORATIONS

### 23                   SUBCHAPTER A. GENERAL PROVISIONS

24           Sec. 21.001. APPLICABILITY OF CHAPTER. This chapter applies  
25 only to a:

26                   (1) domestic for-profit corporation formed under this  
27 code; and

1           (2) foreign for-profit corporation that is  
2 transacting business in this state, regardless of whether the  
3 foreign corporation is registered to transact business in this  
4 state. (New.)

5           Sec. 21.002. DEFINITIONS. In this chapter:

6           (1) "Authorized share" means a share of any class the  
7 corporation is authorized to issue.

8           (2) "Board of directors" includes each person who is  
9 authorized to perform the functions of the board of directors under  
10 a shareholders' agreement as authorized by this chapter.

11           (3) "Cancel," with respect to an authorized share of a  
12 corporation, means the restoration of an issued share to the status  
13 of an authorized but unissued share.

14           (4) "Consuming assets corporation" means a  
15 corporation that:

16           (A) is engaged in the business of exploiting  
17 assets subject to depletion or amortization;

18           (B) states in its certificate of formation that  
19 it is a consuming assets corporation;

20           (C) includes the phrase "a consuming assets  
21 corporation" as part of its official corporate name and gives the  
22 phrase equal prominence with the rest of the corporate name on the  
23 financial statements and certificates of ownership of the  
24 corporation; and

25           (D) includes in each of the certificates of  
26 ownership of the corporation the sentence, "This corporation is  
27 permitted by law to pay dividends out of reserves that may impair

1 its stated capital."

2 (5) "Corporation" or "domestic corporation" means a  
3 domestic for-profit corporation subject to this chapter.

4 (6)(A) "Distribution" means a transfer of property,  
5 including cash, or issuance of debt, by a corporation to its  
6 shareholders in the form of:

7 (i) a dividend on any class or series of its  
8 outstanding shares;

9 (ii) a purchase or redemption, directly or  
10 indirectly, of any of its own shares; or

11 (iii) a payment by the corporation in  
12 liquidation of all or a portion of its assets.

13 (B) The term does not include:

14 (i) a split-up or division of the issued  
15 shares of a class of a corporation into a larger number of shares  
16 within the same class that does not increase the stated capital of  
17 the corporation; or

18 (ii) a transfer of the corporation's own  
19 shares or rights to acquire its own shares.

20 (7) "Foreign corporation" means a for-profit  
21 corporation formed under the laws of a jurisdiction other than this  
22 state.

23 (8) "Investment Company Act" means the Investment  
24 Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended.

25 (9) "Net assets" means the amount by which the total  
26 assets of a corporation exceed the total debts of the corporation.

27 (10) "Share dividend" means a dividend by a

1 corporation that is payable in authorized but unissued shares or  
2 treasury shares of the corporation. The term does not include:

3 (A) an amendment to the corporation's  
4 certificate of formation to change the shares of a class or series,  
5 with or without par value, into the same or a different number of  
6 shares of the same or a different class or series, with or without  
7 par value; or

8 (B) a split-up or division of the issued shares  
9 of a class of a corporation into a larger number of shares within  
10 the same class that does not increase the stated capital of the  
11 corporation.

12 (11) "Stated capital" means the sum of:

13 (A) the par value of all shares of the  
14 corporation with par value that have been issued;

15 (B) the consideration, as expressed in terms of  
16 United States dollars, determined by the corporation in the manner  
17 provided by Section 21.160 for all shares of the corporation  
18 without par value that have been issued, except that part, but not  
19 all, of the consideration that:

20 (i) has been actually received; and

21 (ii) the board, by resolution adopted not  
22 later than the 60th day after the date of issuance of those shares,  
23 has allocated to surplus; and

24 (C) an amount not included in Paragraphs (A) and  
25 (B) that has been transferred to stated capital of the corporation,  
26 on the payment of a share dividend or on adoption by the board of  
27 directors of a resolution directing that all or part of surplus be

1 transferred to stated capital, minus each reduction made as  
2 permitted by law.

3 (12) "Surplus" means the amount by which the net  
4 assets of a corporation exceed the stated capital of the  
5 corporation.

6 (13) "Treasury shares" means shares of a corporation  
7 that have been issued, and subsequently acquired by the  
8 corporation, that belong to the corporation and that have not been  
9 canceled. The term does not include shares held by a corporation in  
10 a fiduciary capacity, whether directly or through a trust or  
11 similar arrangement. (TBCA 1.02.A(3), (4), (7), (11), (13), (14),  
12 (17), (19), (21), (24), (27), (28) (part), 2.38-2.)

13 [Sections 21.003-21.050 reserved for expansion]

14 SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

15 Sec. 21.051. NO PROPERTY RIGHT IN CERTIFICATE OF FORMATION.

16 A shareholder of a corporation does not have a vested property right  
17 resulting from the certificate of formation, including a provision  
18 in the certificate of formation relating to the management,  
19 control, capital structure, dividend entitlement, purpose, or  
20 duration of the corporation. (TBCA 4.01.B.)

21 Sec. 21.052. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE  
22 OF FORMATION. (a) To adopt an amendment to the certificate of  
23 formation of a corporation as provided by Subchapter B, Chapter 3,  
24 the board of directors of the corporation shall:

25 (1) adopt a resolution stating the proposed amendment;  
26 and

27 (2) follow the procedures prescribed by Sections

1 21.053-21.055.

2 (b) The resolution may incorporate the proposed amendment  
3 in a restated certificate of formation that complies with Section  
4 3.059.

5 (c) The certificate of amendment must be filed in accordance  
6 with Chapter 4 and takes effect as provided by Subchapter B, Chapter  
7 3. (TBCA 4.02.A (part).)

8 Sec. 21.053. ADOPTION OF AMENDMENT BY BOARD OF DIRECTORS.  
9 If a corporation does not have any issued and outstanding shares,  
10 the board of directors may adopt a proposed amendment to the  
11 corporation's certificate of formation by resolution without  
12 shareholder approval. (TBCA 4.02.A(1) (part).)

13 Sec. 21.054. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a  
14 corporation has issued and outstanding shares:

15 (1) a resolution described by Section 21.052 must also  
16 direct that the proposed amendment be submitted to a vote of the  
17 shareholders at a meeting; and

18 (2) the shareholders must approve the proposed  
19 amendment in the manner provided by Section 21.055. (TBCA 4.02.A  
20 (part).)

21 Sec. 21.055. NOTICE OF AND MEETING TO CONSIDER PROPOSED  
22 AMENDMENT. (a) Each shareholder of record entitled to vote shall be  
23 given written notice containing the proposed amendment or a summary  
24 of the changes to be effected within the time and in the manner  
25 provided by this code for giving notice of meetings to  
26 shareholders. The proposed amendment or summary may be included in  
27 the notice required to be provided for an annual meeting.



1 (b) At the meeting, the proposed amendment shall be adopted  
2 only on receiving the affirmative vote of shareholders entitled to  
3 vote required by Section 21.364.

4 (c) An unlimited number of amendments may be submitted for  
5 adoption by the shareholders at a meeting. (TBCA 4.02.A (part), B.)

6 Sec. 21.056. RESTATED CERTIFICATE OF FORMATION. (a) A  
7 corporation may adopt a restated certificate of formation as  
8 provided by Subchapter B, Chapter 3, by following the same  
9 procedures to amend its certificate of formation under Sections  
10 21.052-21.055, except that shareholder approval is not required if  
11 an amendment is not adopted.

12 (b) The restated certificate of formation shall be filed in  
13 accordance with Chapter 4 and takes effect as provided by  
14 Subchapter B, Chapter 3. (TBCA 4.07.A (part), D (part).)

15 Sec. 21.057. BYLAWS. (a) The board of directors of a  
16 corporation shall adopt initial bylaws.

17 (b) The bylaws may contain provisions for the regulation and  
18 management of the affairs of the corporation that are consistent  
19 with law and the corporation's certificate of formation.

20 (c) A corporation's board of directors may amend or repeal  
21 bylaws or adopt new bylaws unless:

22 (1) the corporation's certificate of formation or this  
23 code wholly or partly reserves the power exclusively to the  
24 corporation's shareholders; or

25 (2) in amending, repealing, or adopting a bylaw, the  
26 shareholders expressly provide that the board of directors may not  
27 amend, repeal, or readopt that bylaw. (TBCA 2.23.A, B.)

1           Sec. 21.058. DUAL AUTHORITY. Unless the certificate of  
2 formation or a bylaw adopted by the shareholders provides otherwise  
3 as to all or a part of a corporation's bylaws, a corporation's  
4 shareholders may amend, repeal, or adopt the corporation's bylaws  
5 regardless of whether the bylaws may also be amended, repealed, or  
6 adopted by the corporation's board of directors. (TBCA 2.23.C.)

7           Sec. 21.059. ORGANIZATION MEETING. (a) This section does  
8 not apply to a corporation created as a result of a conversion or  
9 merger the plan of which states the bylaws and names the officers of  
10 the corporation.

11           (b) After the filing of a certificate of formation takes  
12 effect, an organization meeting shall be held at the call of the  
13 majority of the initial board of directors or the persons named in  
14 the certificate of formation under Section 3.007(a)(4) for the  
15 purpose of adopting bylaws, electing officers, and transacting  
16 other business.

17           (c) Not later than the third day before the date of the  
18 meeting, the directors or other persons calling the meeting shall  
19 send notice of the time and place of the meeting to each other  
20 director or person named in the certificate of formation. (TBCA  
21 3.06.)

22           [Sections 21.060-21.100 reserved for expansion]

23           SUBCHAPTER C. SHAREHOLDERS' AGREEMENTS

24           Sec. 21.101. SHAREHOLDERS' AGREEMENT. (a) The shareholders  
25 of a corporation may enter into an agreement that:

26           (1) restricts the discretion or powers of the board of  
27 directors;

1           (2) eliminates the board of directors and authorizes  
2 the business and affairs of the corporation to be managed, wholly or  
3 partly, by one or more of its shareholders or other persons;

4           (3) establishes the individuals who shall serve as  
5 directors or officers of the corporation;

6           (4) determines the term of office, manner of selection  
7 or removal, or terms or conditions of employment of a director,  
8 officer, or other employee of the corporation, regardless of the  
9 length of employment;

10          (5) governs the authorization or making of  
11 distributions whether in proportion to ownership of shares, subject  
12 to Section 21.303;

13          (6) determines the manner in which profits and losses  
14 will be apportioned;

15          (7) governs, in general or with regard to specific  
16 matters, the exercise or division of voting power by and between the  
17 shareholders, directors, or other persons, including use of  
18 disproportionate voting rights or director proxies;

19          (8) establishes the terms of an agreement for the  
20 transfer or use of property or for the provision of services between  
21 the corporation and another person, including a shareholder,  
22 director, officer, or employee of the corporation;

23          (9) authorizes arbitration or grants authority to a  
24 shareholder or other person to resolve any issue about which there  
25 is a deadlock among the directors, shareholders, or other persons  
26 authorized to manage the corporation;

27          (10) requires winding up and termination of the

1 corporation at the request of one or more shareholders or on the  
2 occurrence of a specified event or contingency, in which case the  
3 winding up and termination of the corporation will proceed as if all  
4 of the shareholders had consented in writing to the winding up and  
5 termination as provided by Subchapter K; or

6 (11) otherwise governs the exercise of corporate  
7 powers, the management of the business and affairs of the  
8 corporation, or the relationship among the shareholders, the  
9 directors, and the corporation as if the corporation were a  
10 partnership or in a manner that would otherwise be appropriate only  
11 among partners and not contrary to public policy.

12 (b) A shareholders' agreement authorized by this section  
13 must be:

14 (1) contained in:

15 (A) the certificate of formation or bylaws if  
16 approved by all of the shareholders at the time of the agreement; or

17 (B) a written agreement that is:

18 (i) signed by all of the shareholders at the  
19 time of the agreement; and

20 (ii) made known to the corporation; and

21 (2) amended only by all of the shareholders at the time  
22 of the amendment, unless the agreement provides otherwise. (TBCA  
23 2.30-1.A, B (part).)

24 Sec. 21.102. TERM OF AGREEMENT. A shareholders' agreement  
25 under this subchapter is valid for 10 years, unless the agreement  
26 provides otherwise. (TBCA 2.30-1.B (part).)

27 Sec. 21.103. DISCLOSURE OF AGREEMENT; RECALL OF CERTAIN

1 . CERTIFICATES. (a) The existence of an agreement authorized by this  
2 subchapter shall be noted conspicuously on the front or back of each  
3 certificate for outstanding shares or on the information statement  
4 required for uncertificated shares by Section 3.205.

5 (b) The disclosure required by this section must include the  
6 sentence, "These shares are subject to the provisions of a  
7 shareholders' agreement that may provide for management of the  
8 corporation in a manner different than in other corporations and  
9 may subject a shareholder to certain obligations or liabilities not  
10 otherwise imposed on shareholders in other corporations."

11 (c) A corporation that has outstanding shares represented  
12 by certificates at the time the shareholders of the corporation  
13 enter into an agreement under this subchapter shall recall the  
14 outstanding certificates and issue substitute certificates that  
15 comply with this subchapter.

16 (d) The failure to note the existence of the agreement on  
17 the certificate or information statement does not affect the  
18 validity of the agreement or an action taken pursuant to the  
19 agreement. (TBCA 2.30-1.C.)

20 Sec. 21.104. EFFECT OF SHAREHOLDERS' AGREEMENT. A  
21 shareholders' agreement that complies with this subchapter is  
22 effective among the shareholders and between the shareholders and  
23 the corporation even if the terms of the agreement are inconsistent  
24 with this code. (TBCA 2.30-1.A (part).)

25 Sec. 21.105. RIGHT OF RESCISSION; KNOWLEDGE OF PURCHASER OF  
26 SHARES. (a) A purchaser of shares who does not have knowledge at  
27 the time of purchase of the existence of a shareholders' agreement

1 authorized by this subchapter is entitled to rescind the purchase.

2 (b) A purchaser is considered to have knowledge of the  
3 existence of the shareholders' agreement for purposes of this  
4 section if:

5 (1) the existence of the agreement is noted on the  
6 certificate or information statement for the shares as required by  
7 Section 21.103; and

8 (2) with respect to shares that are not represented by  
9 a certificate, the information statement noting existence of the  
10 agreement is delivered to the purchaser not later than the time the  
11 shares are purchased.

12 (c) An action to enforce the right of rescission authorized  
13 by this section must be commenced not later than the earlier of:

14 (1) the 90th day after the date the existence of the  
15 shareholder agreement is discovered; or

16 (2) the second anniversary of the purchase date of the  
17 shares. (TBCA 2.30-1.D.)

18 Sec. 21.106. AGREEMENT LIMITING AUTHORITY OF AND  
19 SUPPLANTING BOARD OF DIRECTORS; LIABILITY. (a) A shareholders'  
20 agreement authorized by this subchapter that limits the discretion  
21 or powers of the board of directors or supplants the board of  
22 directors relieves the directors of, and imposes on a person in whom  
23 the discretion or powers of the board of directors or the management  
24 of the business and affairs of the corporation is vested, liability  
25 for an act or omission of the person in accordance with Subsection  
26 (b).

27 (b) A person on whom liability for an act or omission is

1 imposed under this section is liable in the same manner and to the  
2 same extent as a director on whom liability for an act or omission  
3 is imposed by this code or other law. (TBCA 2.30-1.F.)

4       Sec. 21.107. LIABILITY OF SHAREHOLDER. The existence of or  
5 a performance under a shareholders' agreement authorized by this  
6 subchapter is not a ground for imposing personal liability on a  
7 shareholder for an act or obligation of the corporation by  
8 disregarding the separate existence of the corporation or  
9 otherwise, even if the agreement or a performance under the  
10 agreement:

11           (1) treats the corporation as if the corporation were  
12 a partnership or in a manner that otherwise is appropriate only  
13 among partners;

14           (2) results in the corporation being considered a  
15 partnership for purposes of taxation; or

16           (3) results in failure to observe the corporate  
17 formalities otherwise applicable to the matters governed by the  
18 agreement. (TBCA 2.30-1.G.)

19       Sec. 21.108. PERSONS ACTING IN PLACE OF SHAREHOLDERS. An  
20 organizer or a subscriber for shares may act as a shareholder with  
21 respect to a shareholders' agreement authorized by this subchapter  
22 if no shares have been issued when the agreement is signed. (TBCA  
23 2.30-1.H.)

24       Sec. 21.109. AGREEMENT NOT EFFECTIVE. (a) A shareholders'  
25 agreement authorized by this subchapter ceases to be effective when  
26 shares of the corporation are:

27           (1) listed on a national securities exchange or

1 similar system;

2 (2) quoted on an interdealer quotation system of a  
3 national securities association or successor system; or

4 (3) regularly traded in a market maintained by one or  
5 more members of a national or affiliated securities association.

6 (b) If a corporation does not have a board of directors and  
7 an agreement of the shareholders of the corporation entered into  
8 under this subchapter ceases to be effective, a board of directors  
9 shall be instituted or reinstated to govern the corporation in the  
10 manner provided by Section 21.710(c).

11 (c) If a shareholders' agreement that ceases to be effective  
12 is contained in or referred to by the certificate of formation or  
13 bylaws of a corporation, the board of directors of the corporation  
14 may adopt an amendment to the certificate of formation or bylaws,  
15 without shareholder action, to delete the agreement and any  
16 references to the agreement. (TBCA 2.30-1.E.)

17 [Sections 21.110-21.150 reserved for expansion]

18 SUBCHAPTER D. SHARES, OPTIONS, AND CONVERTIBLE SECURITIES

19 Sec. 21.151. NUMBER OF AUTHORIZED SHARES. A corporation may  
20 issue the number of authorized shares stated in the corporation's  
21 certificate of formation. (TBCA 2.12.A (part).)

22 Sec. 21.152. CLASSES AND SERIES OF SHARES. (a) A  
23 corporation's certificate of formation may divide the corporation's  
24 authorized shares into one or more classes and may divide one or  
25 more classes into one or more series. The certificate of formation  
26 must designate each class and series of authorized shares to  
27 distinguish that class and series from any other class or series.



1 (b) Shares of the same class must be of the same par value or  
2 be without par value, as stated in the certificate of formation.

3 (c) Shares of the same class must be identical in all  
4 respects unless the shares have been divided into one or more  
5 series. If the shares of a class have been divided into one or more  
6 series, the shares may vary between series, but all shares of the  
7 same series will be identical in all respects. (TBCA 2.12.A  
8 (part).)

9 Sec. 21.153. DESIGNATIONS, PREFERENCES, LIMITATIONS, AND  
10 RIGHTS OF A CLASS OR SERIES. (a) Each class or series of authorized  
11 shares of a corporation must have the designations, preferences,  
12 limitations, and relative rights, including voting rights, stated  
13 in the corporation's certificate of formation.

14 (b) The certificate of formation may limit or deny the  
15 voting rights of, or provide special voting rights for, the shares  
16 of a class or series or the shares of a class or series held by a  
17 person or class of persons to the extent the limitation, denial, or  
18 provision is not inconsistent with this code.

19 (c) A designation, preference, limitation, or relative  
20 right, including a voting right, of a class or series of shares of a  
21 corporation may be made dependent on facts not contained in the  
22 certificate of formation, including future acts of the corporation,  
23 if the manner in which those facts will operate on the designation,  
24 preference, limitation, or right is clearly and expressly stated  
25 in the certificate of formation. (TBCA 2.12.A (part).)

26 Sec. 21.154. CERTAIN OPTIONAL CHARACTERISTICS OF SHARES.

27 (a) Subject to Section 21.153, if authorized by the corporation's

1 certificate of formation, a corporation may issue shares that:

2 (1) are redeemable, at the option of the corporation,  
3 shareholder, or other person or on the occurrence of a designated  
4 event, subject to Sections 21.303 and 21.304;

5 (2) entitle the holders of the shares to cumulative,  
6 noncumulative, or partially cumulative distributions;

7 (3) have preferences over any or all other classes or  
8 series of shares with respect to payment of distributions;

9 (4) have preferences over any or all other classes or  
10 series of shares with respect to the assets of the corporation on  
11 the voluntary or involuntary winding up and termination of the  
12 corporation;

13 (5) are exchangeable, at the option of the  
14 corporation, shareholder, or other person or on the occurrence of a  
15 designated event, for shares, obligations, indebtedness, evidence  
16 of ownership, rights to purchase securities of the corporation or  
17 one or more other entities, or other property or for a combination  
18 of those rights, assets, or obligations, subject to Section 21.303;  
19 and

20 (6) are convertible into shares of any other class or  
21 series, at the option of the corporation, shareholder, or other  
22 person or on the occurrence of a designated event.

23 (b) Shares without par value may not be converted into  
24 shares with par value unless:

25 (1) at the time of conversion, the part of the  
26 corporation's stated capital represented by the shares without par  
27 value is at least equal to the aggregate par value of the shares to

1 be converted; or

2 (2) the amount of any deficiency computed under  
3 Subdivision (1) is transferred from surplus to stated capital.  
4 (TBCA 2.12.B.)

5 Sec. 21.155. SERIES OF SHARES ESTABLISHED BY BOARD OF  
6 DIRECTORS. (a) If expressly authorized by the corporation's  
7 certificate of formation and subject to the certificate of  
8 formation, the board of directors of a corporation may establish  
9 series of unissued shares of any class by setting and determining  
10 the designations, preferences, limitations, and relative rights,  
11 including voting rights, of the shares of the series to be  
12 established to the same extent that the designations, preferences,  
13 limitations, or relative rights could be stated if fully specified  
14 in the certificate of formation.

15 (b) To establish a series if authorized by the certificate  
16 of formation, the board of directors must adopt a resolution  
17 specifying the designations, preferences, limitations, and  
18 relative rights, including voting rights, of the series to be  
19 established or specifying any designation, preference, limitation,  
20 or relative right that is not set and determined by the certificate  
21 of formation.

22 (c) If the certificate of formation does not expressly  
23 restrict the board of directors from increasing or decreasing the  
24 number of unissued shares of a series to be established under  
25 Subsection (a), the board of directors may increase or decrease the  
26 number of shares in each series to be established, except that the  
27 board of directors may not decrease the number of shares in a

1 particular series to a number that is less than the number of shares  
2 in that series that are issued at the time of the decrease.

3 (d) To increase or decrease the number of shares of a series  
4 under Subsection (c), the board of directors must adopt a  
5 resolution setting and determining the new number of shares of each  
6 series in which the number of shares is increased or decreased. If  
7 the number of shares of a series is decreased, the shares by which  
8 the series is decreased will resume the status of authorized but  
9 unissued shares of the class of shares from which the series was  
10 established, unless otherwise provided by the certificate of  
11 formation or the terms of the class or series.

12 (e) If no shares of a series established by board resolution  
13 under Subsection (b) are outstanding because no shares of that  
14 series have been issued or no issued shares of that series remain  
15 outstanding, the board of directors by resolution may delete the  
16 series from the certificate of formation and delete any reference  
17 to the series contained in the certificate of formation. Unless  
18 otherwise provided by the certificate of formation, the shares of  
19 any series deleted from the certificate of formation under this  
20 section shall resume the status of authorized but unissued shares  
21 of the class of shares from which the series was established.

22 (f) If no shares of a series established by resolution of  
23 the board of directors under Subsection (b) are outstanding because  
24 no shares of that series have been issued, the board of directors  
25 may amend the designations, preferences, limitations, and relative  
26 rights, including voting rights, of the series or amend any  
27 designation, preference, limitation, or relative right that is not

1 set and determined by the certificate of formation. (TBCA 2.13.A,  
2 B, C; New.)

3           Sec. 21.156. ACTIONS WITH RESPECT TO SERIES OF SHARES. (a)  
4 To effect an action authorized under Section 21.155, the  
5 corporation must file with the secretary of state a statement that  
6 contains:

7                   (1) the name of the corporation;

8                   (2) if the statement relates to the establishment of a  
9 series of shares, a copy of the resolution establishing and  
10 designating the series and setting and determining the  
11 designations, preferences, limitations, and relative rights of the  
12 series;

13                   (3) if the statement relates to an increase or  
14 decrease in the number of shares of a series, a copy of the  
15 resolution setting and determining the new number of shares of each  
16 series in which the number of shares is increased or decreased;

17                   (4) if the statement relates to the deletion of a  
18 series of shares and all references to the series from the  
19 certificate of formation, a copy of the resolution deleting the  
20 series and all references to the series from the certificate of  
21 formation;

22                   (5) if the statement relates to the amendment of  
23 designations, preferences, limitations, or relative rights of  
24 shares of a series that was previously established by resolution of  
25 the board of directors, a copy of the resolution in which the  
26 amendment is specified;

27                   (6) the date of the adoption of the resolution; and

1           (7) a statement that the resolution was adopted by all  
2 necessary action on the part of the corporation.

3           (b) On the filing of a statement described by Subsection  
4 (a), the following resolutions will become an amendment of the  
5 certificate of formation, as appropriate:

6           (1) the resolution establishing and designating the  
7 series and setting and determining the designations, preferences,  
8 limitations, and relative rights of the series;

9           (2) the resolution setting the new number of shares of  
10 each series in which the number of shares is increased or decreased;

11           (3) the resolution deleting a series and all  
12 references to the series from the certificate of formation; or

13           (4) the resolution amending the designations,  
14 preferences, limitations, and relative rights of a series.

15           (c) An amendment of the certificate of formation under this  
16 section is not subject to the procedure to amend the certificate of  
17 formation contained in Subchapter B. (TBCA 2.13.D, F; New.)

18           Sec. 21.157. ISSUANCE OF SHARES. (a) Except as provided by  
19 Section 21.158, a corporation may issue shares for consideration if  
20 authorized by the board of directors of the corporation.

21           (b) Shares may not be issued until the consideration,  
22 determined in accordance with this subchapter, has been paid or  
23 delivered as required in connection with the authorization of the  
24 shares. When the consideration is paid or delivered:

25           (1) the shares are considered to be issued;

26           (2) the subscriber or other person entitled to receive  
27 the shares is a shareholder with respect to the shares; and

1           (3) the shares are considered fully paid and  
2 nonassessable. (TBCA 2.16.A (part).)

3           Sec. 21.158. ISSUANCE OF SHARES UNDER PLAN OF MERGER OR  
4 CONVERSION. (a) A converted corporation under a plan of conversion  
5 or a corporation created by a plan of merger may issue shares for  
6 consideration if authorized by the plan of conversion or plan of  
7 merger, as appropriate.

8           (b) A corporation may issue shares in the manner provided by  
9 and for consideration specified under a plan of merger or plan of  
10 conversion. (TBCA 2.16.A (part).)

11           Sec. 21.159. TYPES OF CONSIDERATION FOR SHARES. Shares with  
12 or without par value may be issued for the following types of  
13 consideration:

14           (1) a tangible or intangible benefit to the  
15 corporation;

16           (2) cash;

17           (3) a promissory note;

18           (4) services performed or a contract for services to  
19 be performed;

20           (5) a security of the corporation or any other  
21 organization; and

22           (6) any other property of any kind or nature. (TBCA  
23 2.16.A (part).)

24           Sec. 21.160. DETERMINATION OF CONSIDERATION FOR SHARES. (a)  
25 Subject to Subsection (b), consideration to be received for shares  
26 must be determined:

27           (1) by the board of directors;

1           (2) by a plan of conversion, if the shares are to be  
2 issued by a converted corporation under the plan; or

3           (3) by a plan of merger, if the shares are to be issued  
4 under the plan by a corporation created under the plan.

5           (b) If the corporation's certificate of formation reserves  
6 to the shareholders the right to determine the consideration to be  
7 received for shares without par value, the shareholders shall  
8 determine the consideration for those shares before the shares are  
9 issued. The board of directors may not determine the consideration  
10 for shares under this subsection.

11           (c) A corporation may dispose of treasury shares for  
12 consideration that may be determined by the board of directors.  
13 (TBCA 2.15.A (part), B (part), C.)

14           Sec. 21.161. AMOUNT OF CONSIDERATION FOR ISSUANCE OF  
15 CERTAIN SHARES. (a) Consideration to be received by a corporation  
16 for the issuance of shares with par value may not be less than the  
17 par value of the shares.

18           (b) The part of the surplus of a corporation that is  
19 transferred to stated capital on the issuance of shares as a share  
20 distribution is considered to be the consideration for the issuance  
21 of those shares.

22           (c) The consideration received by a corporation for the  
23 issuance of shares on the conversion or exchange of its  
24 indebtedness or shares is:

25           (1) the principal of, and accrued interest on, the  
26 indebtedness exchanged or converted, or the stated capital on the  
27 issuance of the shares;



1           (2) the part of surplus, if any, transferred to stated  
2 capital on the issuance of the shares; and

3           (3) any additional consideration paid to the  
4 corporation on the issuance of the shares.

5           (d) The consideration received by a corporation for the  
6 issuance of shares on the exercise of rights or options is:

7           (1) any consideration received by the corporation for  
8 the rights or options; and

9           (2) any consideration received by the corporation for  
10 the issuance of shares on the exercise of the rights or options.

11 (TBCA 2.15.A (part), D, E, F.)

12           Sec. 21.162. VALUE AND SUFFICIENCY OF CONSIDERATION. In the  
13 absence of fraud in the transaction, the judgment of the board of  
14 directors, the shareholders, or the party approving the plan of  
15 conversion or the plan of merger, as appropriate, is conclusive in  
16 determining the value and sufficiency of the consideration received  
17 for the shares. (TBCA 2.16.B.)

18           Sec. 21.163. ISSUANCE AND DISPOSITION OF FRACTIONAL SHARES  
19 OR SCRIP. (a) A corporation may:

20           (1) issue fractions of a share, either certificated or  
21 uncertificated;

22           (2) arrange for the disposition of fractional  
23 interests by persons entitled to the interests;

24           (3) pay cash for the fair value of fractions of a share  
25 determined when the shareholders entitled to receive the fractions  
26 are determined; or

27           (4) subject to Subsection (b), issue scrip in

1 registered or bearer form that entitles the holder to receive a  
2 certificate for a full share or an uncertificated full share on the  
3 surrender of the scrip aggregating a full share.

4 (b) The board of directors may issue scrip:

5 (1) on the condition that the scrip will become void if  
6 not exchanged for certificated or uncertificated full shares before  
7 a specified date;

8 (2) on the condition that the shares for which the  
9 scrip is exchangeable may be sold by the corporation and the  
10 proceeds from the sale of the shares may be distributed to the  
11 holders of scrip; or

12 (3) subject to any other condition the board of  
13 directors may determine advisable. (TBCA 2.20 (part).)

14 Sec. 21.164. RIGHTS OF HOLDERS OF FRACTIONAL SHARES OR  
15 SCRIP. (a) A holder of a certificated or uncertificated fractional  
16 share is entitled to exercise voting rights, receive distributions,  
17 and make a claim with respect to the assets of the corporation in  
18 the event of winding up and termination.

19 (b) A holder of a certificate for scrip is not entitled to  
20 exercise voting rights, receive distributions, or make a claim with  
21 respect to the assets of the corporation in the event of winding up  
22 and termination unless the scrip provides for those rights. (TBCA  
23 2.20 (part).)

24 Sec. 21.165. SUBSCRIPTIONS. (a) A corporation may accept a  
25 subscription by notifying the subscriber in writing.

26 (b) A subscription to purchase shares in a corporation in  
27 the process of being formed is irrevocable for six months if the

1 subscription is in writing and signed by the subscriber, unless the  
2 subscription provides for a longer or shorter period or all of the  
3 other subscribers agree to the revocation of the subscription.

4 (c) A written subscription entered into after the  
5 corporation is formed is a contract between the subscriber and the  
6 corporation. (TBCA 2.14.)

7 Sec. 21.166. PREFORMATION SUBSCRIPTION. (a) The  
8 corporation may determine the payment terms of a preformation  
9 subscription unless the payment terms are specified by the  
10 subscription. The payment terms may authorize payment in full on  
11 acceptance or by installments.

12 (b) Unless the subscription provides otherwise, a  
13 corporation shall make calls placed to all subscribers of similar  
14 interests for payment on preformation subscriptions uniform as far  
15 as practicable.

16 (c) After the corporation is formed, if a subscriber fails  
17 to pay any installment or call when due, a corporation may:

18 (1) collect in the same manner as any other debt the  
19 amount due on any unpaid preformation subscription; or

20 (2) forfeit the subscription if the installment or  
21 call remains unpaid for 20 days after written notice to the  
22 subscriber.

23 (d) Although the forfeiture of a subscription terminates  
24 all the rights and obligations of the subscriber, the corporation  
25 may retain any amount previously paid on the subscription. (TBCA  
26 2.14.D (part).)

27 Sec. 21.167. COMMITMENT TO PURCHASE SHARES. (a) A person

1 who contemplates the acquisition of shares in a corporation may  
2 commit to act in a specified manner with respect to the shares after  
3 the acquisition, including the voting of the shares or the  
4 retention or disposition of the shares. To be binding, the  
5 commitment must be in writing and be signed by the person acquiring  
6 the shares.

7 (b) A written commitment entered into under Subsection (a)  
8 is a contract between the shareholder and the corporation. (New.)

9 Sec. 21.168. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE  
10 INDEBTEDNESS. (a) Except as provided by the corporation's  
11 certificate of formation and regardless of whether done in  
12 connection with the issuance and sale of any other share or security  
13 of the corporation, a corporation may create and issue:

14 (1) rights or options that entitle the holders to  
15 purchase or receive from the corporation shares of any class or  
16 series or other securities; and

17 (2) indebtedness convertible into shares of any class  
18 or series of the corporation or other securities of the  
19 corporation.

20 (b) A right, option, or indebtedness described by this  
21 section shall be evidenced in the manner approved by the board of  
22 directors.

23 (c) Subject to the certificate of formation, a right or  
24 option described by this section must state the terms on which, the  
25 time within which, and any consideration for which the shares may be  
26 purchased or received from the corporation on the exercise of the  
27 right or option.

1           (d) Subject to the certificate of formation, convertible  
2 indebtedness described by this section must state the terms and  
3 conditions on which, the time within which, and the conversion  
4 ratio at which the indebtedness may be converted into shares. (TBCA  
5 2.14-1 (part).)

6           Sec. 21.169. TERMS AND CONDITIONS OF RIGHTS AND OPTIONS.

7           (a) The terms and conditions of rights or options may include  
8 restrictions or conditions that:

9                   (1) prohibit or limit the exercise, transfer, or  
10 receipt of the rights or options by certain persons or classes of  
11 persons, including:

12                           (A) a person who beneficially owns or offers to  
13 acquire a specified number or percentage of the outstanding common  
14 shares, voting power, or other securities of the corporation; or

15                           (B) a transferee of a person described by  
16 Paragraph (A); or

17                   (2) invalidate or void the rights or options held by a  
18 person or transferee described by Subdivision (1).

19           (b) Rights or options created or issued before the effective  
20 date of this code that comply with this section and are not in  
21 conflict with other provisions of this code are ratified.

22           (c) Unless otherwise provided under the terms of rights or  
23 options or the agreement or plan under which the rights or options  
24 are issued, the authority to grant, amend, redeem, extend, or  
25 replace the rights or options on behalf of a corporation is vested  
26 exclusively in the board of directors of the corporation. A bylaw  
27 may not require the board to grant, amend, redeem, extend, or

1 replace the rights or options. (New.)

2           Sec. 21.170. CONSIDERATION FOR RIGHTS, OPTIONS, AND  
3 CONVERTIBLE INDEBTEDNESS. (a) In the absence of fraud in the  
4 transaction, the judgment of the board of directors of a  
5 corporation as to the adequacy of the consideration received for  
6 rights, options, or convertible indebtedness is conclusive.

7           (b) A corporation may issue rights or options to its  
8 shareholders, officers, consultants, independent contractors,  
9 employees, or directors without consideration if, in the judgment  
10 of the board of directors, the issuance of the rights or options is  
11 in the interests of the corporation.

12           (c) The consideration for shares having a par value, other  
13 than treasury shares, and issued on the exercise of the rights or  
14 options may not be less than the par value of the shares.

15           (d) A privilege of conversion may not be conferred on, or  
16 altered with respect to, any indebtedness that would result in the  
17 corporation receiving less than the minimum consideration required  
18 to be received on issuance of the shares.

19           (e) The consideration for shares issued on the exercise of  
20 rights, options, or convertible indebtedness shall be determined as  
21 provided by Section 21.161. (TBCA 2.14-1 (part).)

22           Sec. 21.171. TREASURY SHARES. (a) Treasury shares are  
23 considered to be issued shares and not outstanding shares.

24           (b) Treasury shares may not be included in the total assets  
25 of a corporation for purposes of determining the net assets of a  
26 corporation. (TBCA 1.02.A(28) (part).)

27           Sec. 21.172. EXPENSES OF ORGANIZATION, REORGANIZATION, AND

1 FINANCING OF CORPORATION. A corporation may pay or authorize to be  
2 paid from the consideration received by the corporation as payment  
3 for the corporation's shares the reasonable charges and expenses of  
4 the organization or reorganization of the corporation and the sale  
5 or underwriting of the shares without rendering the shares not  
6 fully paid and nonassessable. (TBCA 2.18.)

7 Sec. 21.173. SUPPLEMENTAL REQUIRED RECORDS. In addition to  
8 the books and records required to be kept under Section 3.151, a  
9 corporation shall keep at its registered office or principal place  
10 of business, or at the office of its transfer agent or registrar, a  
11 record of:

12 (1) the original issuance of shares issued by the  
13 corporation;

14 (2) each transfer of those shares that have been  
15 presented to the corporation for registration of transfer;

16 (3) the names and addresses of all past shareholders  
17 of the corporation; and

18 (4) the number and class or series of shares issued by  
19 the corporation held by each current and past shareholder. (TBCA  
20 2.44.A (part).)

21 [Sections 21.174-21.200 reserved for expansion]

22 SUBCHAPTER E. SHAREHOLDER RIGHTS AND RESTRICTIONS

23 Sec. 21.201. REGISTERED HOLDERS AS OWNERS. Except as  
24 otherwise provided by this code and subject to Chapter 8, Business &  
25 Commerce Code, a corporation may consider the person registered as  
26 the owner of a share in the share transfer records of the  
27 corporation at a particular time, including a record date set under

1 Section 6.101 or 6.102 or Subchapter H, as the owner of that share  
2 at that time for purposes of:

3 (1) voting the share;

4 (2) receiving distributions on the share;

5 (3) transferring the share;

6 (4) receiving notice, exercising rights of dissent,  
7 exercising or waiving a preemptive right, or giving proxies with  
8 respect to that share;

9 (5) entering into agreements with respect to that  
10 share in accordance with Section 6.251, 6.252, or 21.210; or

11 (6) any other shareholder action. (TBCA 2.26.A  
12 (part).)

13 Sec. 21.202. DEFINITION OF SHARES. In Sections  
14 21.203-21.208, "shares" includes a security:

15 (1) that is convertible into shares; or

16 (2) that carries a right to subscribe for or acquire  
17 shares. (TBCA 2.22-1.A (part).)

18 Sec. 21.203. NO STATUTORY PREEMPTIVE RIGHT UNLESS PROVIDED  
19 BY CERTIFICATE OF FORMATION. (a) Except as provided by Section  
20 21.208, a shareholder of a corporation does not have a preemptive  
21 right under this subchapter to acquire the corporation's unissued  
22 or treasury shares except to the extent provided by the  
23 corporation's certificate of formation.

24 (b) If the certificate of formation includes a statement  
25 that the corporation "elects to have a preemptive right" or a  
26 similar statement, Section 21.204 applies to a shareholder except  
27 to the extent the certificate of formation expressly provides



1 otherwise. (New.)

2           Sec. 21.204. STATUTORY PREEMPTIVE RIGHTS. (a) If the  
3 shareholders of a corporation have a preemptive right under this  
4 subchapter, the shareholders have a preemptive right to acquire  
5 proportional amounts of the corporation's unissued or treasury  
6 shares on the decision of the corporation's board of directors to  
7 issue the shares. The preemptive right granted under this  
8 subsection is subject to uniform terms and conditions prescribed by  
9 the board of directors to provide a fair and reasonable opportunity  
10 to exercise the preemptive right.

11           (b) No preemptive right exists with respect to:

12           (1) shares issued or granted as compensation to a  
13 director, officer, agent, or employee of the corporation or a  
14 subsidiary or affiliate of the corporation;

15           (2) shares issued or granted to satisfy conversion or  
16 option rights created to provide compensation to a director,  
17 officer, agent, or employee of the corporation or a subsidiary or  
18 affiliate of the corporation;

19           (3) shares authorized in the corporation's certificate  
20 of formation that are issued not later than the 180th day after the  
21 effective date of the corporation's formation; or

22           (4) shares sold, issued, or granted by the corporation  
23 for consideration other than money.

24           (c) A holder of a share of a class without general voting  
25 rights but with a preferential right to distributions of profits,  
26 income, or assets does not have a preemptive right with respect to  
27 shares of any class.

1           (d) A holder of a share of a class with general voting rights  
2 but without preferential rights to distributions of profits,  
3 income, or assets does not have a preemptive right with respect to  
4 shares of any class with preferential rights to distributions of  
5 profits, income, or assets unless the shares with preferential  
6 rights are convertible into or carry a right to subscribe for or  
7 acquire shares without preferential rights.

8           (e) For a one-year period after the date the shares have  
9 been offered to shareholders, shares subject to preemptive rights  
10 that are not acquired by a shareholder may be issued to a person at a  
11 consideration set by the corporation's board of directors that is  
12 not lower than the consideration set for the exercise of preemptive  
13 rights. An offer at a lower consideration or after the expiration of  
14 the period prescribed by this subsection is subject to the  
15 shareholder's preemptive rights. (TBCA 2.22-1.A, B.)

16           Sec. 21.205. WAIVER OF PREEMPTIVE RIGHT. (a) A shareholder  
17 may waive a preemptive right granted to the shareholder.

18           (b) A written waiver of a preemptive right is irrevocable  
19 regardless of whether the waiver is supported by consideration.  
20 (New.)

21           Sec. 21.206. LIMITATION ON ACTION TO ENFORCE PREEMPTIVE  
22 RIGHT. (a) An action brought against a corporation, the board of  
23 directors or an officer, shareholder, or agent of the corporation,  
24 or an owner of a beneficial interest in shares of the corporation  
25 for the violation of a preemptive right of a shareholder must be  
26 brought not later than the earlier of:

27           (1) the first anniversary of the date written notice

1 is given to each shareholder whose preemptive right was violated;  
2 or

3 (2) the fourth anniversary of the latest of:

4 (A) the date the corporation issued the shares,  
5 securities, or rights;

6 (B) the date the corporation sold the shares,  
7 securities, or rights; or

8 (C) the date the corporation otherwise  
9 distributed the shares, securities, or rights.

10 (b) The notice required by Subsection (a)(1) must:

11 (1) be sent to the holder at the address for the holder  
12 as shown on the appropriate records of the corporation; and

13 (2) inform the holder that the issuance, sale, or  
14 other distribution of shares, securities, or rights violated the  
15 holder's preemptive right. (TBCA 2.22-1.C.)

16 Sec. 21.207. DISPOSITION OF SHARES HAVING PREEMPTIVE  
17 RIGHTS. The transferee or successor of a share that has been  
18 transferred or otherwise disposed of by a shareholder of a  
19 corporation whose preemptive right to acquire shares in the  
20 corporation has been violated does not acquire the preemptive  
21 right, or any right or claim based on the violation, unless the  
22 previous shareholder has assigned the preemptive right to the  
23 transferee or successor. (TBCA 2.22-1.D.)

24 Sec. 21.208. PREEMPTIVE RIGHT IN EXISTING CORPORATION.  
25 Subject to the certificate of formation, a shareholder of a  
26 corporation incorporated before the effective date of this code has  
27 a preemptive right to acquire unissued or treasury shares of the

1 corporation to the extent provided by Sections 21.204, 21.206, and  
2 21.207. After the effective date of this code, a corporation may  
3 limit or deny the preemptive right of the shareholders of the  
4 corporation by amending the corporation's certificate of  
5 formation. (New.)

6 Sec. 21.209. TRANSFER OF SHARES AND OTHER SECURITIES.  
7 Except as otherwise provided by this code, the shares and other  
8 securities of a corporation are transferable in accordance with  
9 Chapter 8, Business & Commerce Code. (TBCA 2.22.A (part).)

10 Sec. 21.210. RESTRICTION ON TRANSFER OF SHARES AND OTHER  
11 SECURITIES. (a) A restriction on the transfer or registration of  
12 transfer of a security may be imposed by:

- 13 (1) the corporation's certificate of formation;  
14 (2) the corporation's bylaws;  
15 (3) a written agreement among two or more holders of  
16 the securities; or  
17 (4) a written agreement among one or more holders of  
18 the securities and the corporation if:

19 (A) the corporation files a copy of the agreement  
20 at the principal place of business or registered office of the  
21 corporation; and

22 (B) the copy of the agreement is subject to the  
23 same right of examination by a shareholder of the corporation, in  
24 person or by agent, attorney, or accountant, as the books and  
25 records of the corporation.

26 (b) A restriction imposed under Subsection (a) is not valid  
27 with respect to a security issued before the restriction has been

1 adopted, unless the holder of the security voted in favor of the  
2 restriction or is a party to the agreement imposing the  
3 restriction. (TBCA 2.22.B.)

4           Sec. 21.211.   VALID           RESTRICTIONS           ON           TRANSFER.

5 Notwithstanding Sections 21.210 and 21.213, a restriction placed on  
6 the transfer or registration of transfer of a security of a  
7 corporation is valid if the restriction reasonably:

8           (1) obligates the holder of the restricted security to  
9 offer a person, including the corporation or other holders of  
10 securities of the corporation, an opportunity to acquire the  
11 restricted security within a reasonable time before the transfer;

12           (2) obligates the corporation, to the extent provided  
13 by this code, or another person to purchase securities that are the  
14 subject of an agreement relating to the purchase and sale of the  
15 restricted security;

16           (3) requires the corporation or the holders of a class  
17 of the corporation's securities to consent to a proposed transfer  
18 of the restricted security or to approve the proposed transferee of  
19 the restricted security for the purpose of preventing a violation  
20 of law;

21           (4) prohibits the transfer of the restricted security  
22 to a designated person or group of persons and the designation is  
23 not manifestly unreasonable;

24           (5) maintains the status of the corporation as an  
25 electing small business corporation under Subchapter S of the  
26 Internal Revenue Code;

27           (6) maintains a tax advantage to the corporation; or

1           (7) maintains the status of the corporation as a close  
2 corporation under Subchapter O. (TBCA 2.22.D.)

3           Sec. 21.212. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF  
4 SHARES OR OTHER SECURITIES. (a) A corporation that has adopted a  
5 bylaw or is a party to an agreement that restricts the transfer of  
6 the shares or other securities of the corporation may file with the  
7 secretary of state, in accordance with Chapter 4, a copy of the  
8 bylaw or agreement and a statement attached to the copy that:

9           (1) contains the name of the corporation;

10           (2) states that the attached copy of the bylaw or  
11 agreement is a true and correct copy of the bylaw or agreement; and

12           (3) states that the filing has been authorized by the  
13 board of directors or, in the case of a corporation that is managed  
14 in some other manner under a shareholders' agreement, by the person  
15 empowered by the agreement to manage the corporation's business and  
16 affairs.

17           (b) After a statement described by Subsection (a) is filed  
18 with the secretary of state, the bylaws or agreement restricting  
19 the transfer of shares or other securities is a public record, and  
20 the fact that the statement has been filed may be stated on a  
21 certificate representing the restricted shares or securities if  
22 required by Section 3.202.

23           (c) A corporation that is a party to an agreement  
24 restricting the transfer of the shares or other securities of the  
25 corporation may make the agreement part of the corporation's  
26 certificate of formation without restating the provisions of the  
27 agreement in the certificate of formation by amending the

1 certificate of formation. If the agreement alters any provision of  
2 the certificate of formation, the certificate of amendment shall  
3 identify the altered provision by reference or description. If the  
4 agreement is an addition to the certificate of formation, the  
5 certificate of amendment must state that fact.

6 (d) The certificate of amendment must:

7 (1) include a copy of the agreement restricting the  
8 transfer of shares or other securities;

9 (2) state that the attached copy of the agreement is a  
10 true and correct copy of the agreement; and

11 (3) state that inclusion of the certificate of  
12 amendment as part of the certificate of formation has been  
13 authorized in the manner required by this code to amend the  
14 certificate of formation. (TBCA 2.22.E (part), F.)

15 Sec. 21.213. ENFORCEABILITY OF RESTRICTION ON TRANSFER OF  
16 CERTAIN SECURITIES. (a) A restriction placed on the transfer or  
17 registration of the transfer of a security of a corporation is  
18 specifically enforceable against the holder, or a successor or  
19 transferee of the holder, if:

20 (1) the restriction is reasonable and noted  
21 conspicuously on the certificate or other instrument representing  
22 the security; or

23 (2) with respect to an uncertificated security, the  
24 restriction is reasonable and a notation of the restriction is  
25 contained in the notice sent with respect to the security under  
26 Section 3.205.

27 (b) Unless noted in the manner specified by Subsection (a)

1 with respect to a certificate or other instrument or an  
2 uncertificated security, an otherwise enforceable restriction is  
3 ineffective against a transferee for value without actual knowledge  
4 of the restriction at the time of the transfer or against a  
5 subsequent transferee, regardless of whether the transfer is for  
6 value. A restriction is specifically enforceable against a person  
7 other than a transferee for value from the time the person acquires  
8 actual knowledge of the restriction's existence. (TBCA 2.22.C.)

9       Sec. 21.214. JOINT OWNERSHIP OF SHARES. (a) If shares are  
10 registered on the books of a corporation in the names of two or more  
11 persons as joint owners with the right of survivorship and one of  
12 the owners dies, the corporation may record on its books and effect  
13 the transfer of the shares to a person, including the surviving  
14 joint owner, and pay any distributions made with respect to the  
15 shares, as if the surviving joint owner was the absolute owner of  
16 the shares. The recording and distribution authorized by this  
17 subsection must be made after the death of a joint owner and before  
18 the corporation receives actual written notice that a party other  
19 than a surviving joint owner is claiming an interest in the shares  
20 or distribution.

21       (b) The discharge of a corporation from liability under  
22 Section 21.216 and the transfer of full legal and equitable title of  
23 the shares does not affect, reduce, or limit any cause of action  
24 existing in favor of an owner of an interest in the shares or  
25 distributions against the surviving owner. (TBCA 2.22.G (part).)

26       Sec. 21.215. LIABILITY FOR DESIGNATING OWNER OF SHARES. A  
27 corporation or an officer, director, employee, or agent of the



1 corporation may not be held liable for considering the person who is  
2 registered as the owner of a share in the share transfer records of  
3 the corporation at a particular time to be the owner of the share at  
4 that time for a purpose described by Section 21.201, regardless of  
5 whether the person possesses a certificate for that share. (TBCA  
6 2.26.A(2).)

7       Sec. 21.216. LIABILITY REGARDING JOINT OWNERSHIP OF SHARES.  
8 A corporation that transfers shares or makes a distribution to a  
9 surviving joint owner under Section 21.214 before the corporation  
10 has received a written claim for the shares or distribution from  
11 another person is discharged from liability for the transfer or  
12 payment. (TBCA 2.22.G (part).)

13       Sec. 21.217. LIABILITY OF ASSIGNEE OR TRANSFEREE. An  
14 assignee or transferee of certificated shares, uncertificated  
15 shares, or a subscription for shares in good faith and without  
16 knowledge that full consideration for the shares or subscription  
17 has not been paid may not be held personally liable to the  
18 corporation or a creditor of the corporation for an unpaid portion  
19 of the consideration. (TBCA 2.21.C.)

20       Sec. 21.218. EXAMINATION OF RECORDS. (a) In this section, a  
21 holder of a beneficial interest in a voting trust entered into under  
22 Section 6.251 is a holder of the shares represented by the  
23 beneficial interest.

24       (b) Subject to the governing documents and on written demand  
25 stating a proper purpose, a holder of shares of a corporation for at  
26 least six months immediately preceding the holder's demand, or a  
27 holder of at least five percent of all of the outstanding shares of

1 a corporation, is entitled to examine and copy, at a reasonable  
2 time, the corporation's relevant books, records of account,  
3 minutes, and share transfer records. The examination may be  
4 conducted in person or through an agent, accountant, or attorney.

5 (c) This section does not impair the power of a court, on the  
6 presentation of proof of proper purpose by a beneficial or record  
7 holder of shares, to compel the production for examination by the  
8 holder of the books and records of accounts, minutes, and share  
9 transfer records of a corporation, regardless of the period during  
10 which the holder was a beneficial holder or record holder and  
11 regardless of the number of shares held by the person. (TBCA  
12 2.44.C, E, G.)

13 Sec. 21.219. ANNUAL AND INTERIM STATEMENTS OF CORPORATION.

14 (a) On written request of a shareholder of the corporation, a  
15 corporation shall mail to the shareholder:

16 (1) the annual statements of the corporation for the  
17 last fiscal year that contain in reasonable detail the  
18 corporation's assets and liabilities and the results of the  
19 corporation's operations; and

20 (2) the most recent interim statements, if any, that  
21 have been filed in a public record or other publication.

22 (b) The corporation shall be allowed a reasonable time to  
23 prepare the annual statements. (TBCA 2.44.F.)

24 Sec. 21.220. PENALTY FOR FAILURE TO PREPARE VOTING LIST. An  
25 officer or agent of a corporation who is in charge of the  
26 corporation's share transfer records and who does not prepare the  
27 list of owners, keep the list on file for a 10-day period, or

1 produce and keep the list available for inspection at the annual  
2 meeting as required by Sections 21.354 and 21.372 is liable to an  
3 owner who suffers damages because of the failure for the damage  
4 caused by the failure. (TBCA 2.27.C (part).)

5 Sec. 21.221. PENALTY FOR FAILURE TO PROVIDE NOTICE OF  
6 MEETING. If an officer or agent of a corporation is unable to comply  
7 with the duties prescribed by Sections 21.354 and 21.372 because  
8 the officer or agent did not receive notice of a meeting of owners  
9 within a sufficient time before the date of the meeting, the  
10 corporation, rather than the officer or agent, is liable to an owner  
11 who suffers damages because of the failure for the extent of the  
12 damage caused by the failure. (TBCA 2.27.C (part).)

13 Sec. 21.222. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF  
14 CERTAIN RECORDS. (a) A corporation that refuses to allow a person  
15 to examine and make copies of account records, minutes, and share  
16 transfer records under Section 21.218 is liable to the shareholder  
17 for any cost or expense, including attorney's fees, incurred in  
18 enforcing the shareholder's rights under Section 21.218. The  
19 liability imposed on a corporation under this subsection is in  
20 addition to any other damages or remedy afforded to the shareholder  
21 by law.

22 (b) It is a defense to an action brought under this section  
23 that the person suing:

24 (1) has, within the two years preceding the date the  
25 action is brought, sold or offered for sale a list of shareholders  
26 or of holders of voting trust certificates in consideration for  
27 shares of the corporation or any other corporation;

1           (2) has aided or abetted a person in procuring a list  
2 of shareholders or of holders of voting trust certificates for the  
3 purpose described by Subdivision (1);

4           (3) has improperly used information obtained through a  
5 prior examination of the books and account records, minutes, or  
6 share transfer records of the corporation or any other corporation;  
7 or

8           (4) was not acting in good faith or for a proper  
9 purpose in making the person's request for examination. (TBCA  
10 2.44.D.)

11           Sec. 21.223. LIMITATION OF LIABILITY FOR OBLIGATIONS. (a)

12 A holder of shares, an owner of any beneficial interest in shares,  
13 or a subscriber for shares whose subscription has been accepted, or  
14 any affiliate of such a holder, owner, or subscriber of the  
15 corporation, may not be held liable to the corporation or its  
16 obligees with respect to:

17           (1) the shares, other than the obligation to pay to the  
18 corporation the full amount of consideration, fixed in compliance  
19 with Sections 21.157-21.162, for which the shares were or are to be  
20 issued;

21           (2) any contractual obligation of the corporation or  
22 any matter relating to or arising from the obligation on the basis  
23 that the holder, beneficial owner, subscriber, or affiliate is or  
24 was the alter ego of the corporation or on the basis of actual or  
25 constructive fraud, a sham to perpetrate a fraud, or other similar  
26 theory; or

27           (3) any obligation of the corporation on the basis of

1 the failure of the corporation to observe any corporate formality,  
2 including the failure to:

3 (A) comply with this code or the articles of  
4 incorporation or bylaws of the corporation; or

5 (B) observe any requirement prescribed by this  
6 code or the articles of incorporation or bylaws of the corporation  
7 for acts to be taken by the corporation or its directors or  
8 shareholders.

9 (b) Subsection (a)(2) does not prevent or limit the  
10 liability of a holder, beneficial owner, subscriber, or affiliate  
11 if the obligee demonstrates that the holder, beneficial owner,  
12 subscriber, or affiliate caused the corporation to be used for the  
13 purpose of perpetrating and did perpetrate an actual fraud on the  
14 obligee primarily for the direct personal benefit of the holder,  
15 beneficial owner, subscriber, or affiliate. (TBCA 2.21.A.)

16 Sec. 21.224. PREEMPTION OF LIABILITY. The liability of a  
17 holder, beneficial owner, or subscriber of shares of a corporation,  
18 or any affiliate of such a holder, owner, or subscriber of the  
19 corporation, for an obligation that is limited by Section 21.223 is  
20 exclusive and preempts any other liability imposed for that  
21 obligation under common law or otherwise. (TBCA 2.21.B (part).)

22 Sec. 21.225. EXCEPTIONS TO LIMITATIONS. Section 21.223 or  
23 21.224 does not limit the obligation of a holder, beneficial owner,  
24 subscriber, or affiliate to the obligee of the corporation if that  
25 person:

26 (1) expressly assumes, guarantees, or agrees to be  
27 personally liable to the obligee for the obligation; or

1           (2) is otherwise liable to the obligee for the  
2 obligation under this code or other applicable statute. (TBCA  
3 2.21.B (part).)

4           Sec. 21.226. PLEDGEEES AND TRUST ADMINISTRATORS. (a) A  
5 pledgee or other holder of shares as collateral security is not  
6 personally liable as a shareholder.

7           (b) An executor, administrator, conservator, guardian,  
8 trustee, assignee for the benefit of creditors, or receiver is not  
9 personally liable as a holder of or subscriber to shares of a  
10 corporation.

11           (c) The estate and funds administered by an executor,  
12 administrator, conservator, guardian, trustee, assignee for the  
13 benefit of creditors, or receiver are liable for the full amount of  
14 the consideration for which the shares were or are to be issued.  
15 (TBCA 2.21.D, E.)

16           [Sections 21.227-21.250 reserved for expansion]

17           SUBCHAPTER F. REDUCTIONS IN STATED CAPITAL;

18                   CANCELLATION OF TREASURY SHARES

19           Sec. 21.251. REDUCTION OF STATED CAPITAL BY REDEMPTION OR  
20 PURCHASE OF REDEEMABLE SHARES. (a) At the time a corporation  
21 redeems or purchases the redeemable shares of the corporation, the  
22 redemption or purchase has the effect of:

23                   (1) canceling the shares; and

24                   (2) restoring the shares to the status of authorized  
25 but unissued shares, unless the corporation's certificate of  
26 formation provides that shares may not be reissued after the shares  
27 are redeemed or purchased by the corporation.

1           (b) If the corporation is prohibited from reissuing the  
2 shares by the certificate of formation following a redemption or  
3 purchase under Subsection (a), the number of shares of the class  
4 that the corporation is authorized to issue is reduced by the number  
5 of shares canceled.

6           (c) If shares redeemed or purchased by a corporation under  
7 Subsection (a) constitute all of the outstanding shares of a  
8 particular class of shares and the certificate of formation  
9 provides that the shares of the class, when redeemed and  
10 repurchased, may not be reissued, the corporation may not issue any  
11 additional shares of the class of shares.

12           (d) Upon the redemption or purchase of redeemable shares  
13 under this section, the stated capital of the corporation shall be  
14 reduced by that part of the stated capital that was, at the time of  
15 the redemption or purchase, represented by those redeemable shares.  
16 (TBCA 4.10.A, D.)

17           Sec. 21.252. CANCELLATION OF TREASURY SHARES. (a) A  
18 corporation, by resolution of the board of directors of the  
19 corporation, may cancel all or part of the corporation's treasury  
20 shares at any time.

21           (b) Upon the cancellation of treasury shares, the stated  
22 capital of the corporation shall be reduced by that part of the  
23 stated capital that was, at the time of the cancellation,  
24 represented by the canceled shares, and the canceled shares shall  
25 be restored to the status of authorized but unissued shares.

26           (c) This section does not prohibit a cancellation of shares  
27 or a reduction of stated capital in any other manner permitted by

1 law. (TBCA 4.11.)

2 Sec. 21.253. PROCEDURES FOR REDUCTION OF STATED CAPITAL BY  
3 BOARD OF DIRECTORS. (a) If all or part of the stated capital of a  
4 corporation is represented by shares without par value, the stated  
5 capital of the corporation may be reduced in the manner provided by  
6 this section.

7 (b) The board of directors shall adopt a resolution that:

8 (1) states the amount of the proposed reduction of the  
9 stated capital and the manner in which the reduction will be  
10 effected; and

11 (2) directs that the proposed reduction be submitted  
12 to a vote of the shareholders at an annual or special meeting.

13 (c) Each shareholder of record entitled to vote on the  
14 reduction of stated capital shall be given written notice stating  
15 that the purpose or one of the purposes of the meeting is to  
16 consider the matter of reducing the stated capital of the  
17 corporation in the amount and manner proposed by the board of  
18 directors. The notice shall be given in the time and manner  
19 provided by this code for giving notice of shareholders' meetings.

20 (d) The affirmative vote of the holders of at least the  
21 majority of the shares entitled to vote on the matter is required  
22 for approval of the resolution proposing the reduction of stated  
23 capital.

24 (e) Upon the approval of the resolution by the shareholders,  
25 the stated capital of the corporation shall be reduced as provided  
26 in the resolution. (TBCA 4.12.A, D.)

27 Sec. 21.254. RESTRICTION ON REDUCTION OF STATED CAPITAL.



1 The stated capital of a corporation may not be reduced under this  
2 subchapter if the amount of the aggregate stated capital of the  
3 corporation would be reduced to an amount equal to or less than the  
4 sum of the:

5 (1) aggregate preferential amounts payable on all  
6 issued shares with a preferential right to the assets of the  
7 corporation in the event of voluntary winding up and termination;  
8 and

9 (2) aggregate par value of all issued shares with par  
10 value but no preferential right to the assets of the corporation in  
11 the event of voluntary winding up and termination. (TBCA 4.12.E.)

12 [Sections 21.255-21.300 reserved for expansion]

13 SUBCHAPTER G. DISTRIBUTIONS AND SHARE DIVIDENDS

14 Sec. 21.301. DEFINITIONS. In this subchapter:

15 (1) "Distribution limit," with respect to a  
16 distribution made by a corporation, other than a distribution  
17 described by Subdivision (2), means:

18 (A) the net assets of the corporation if the  
19 distribution:

20 (i) is a purchase or redemption of its own  
21 shares by a corporation that:

22 (a) is eliminating fractional shares;

23 (b) is collecting or compromising  
24 indebtedness owed by or to the corporation; or

25 (c) is paying dissenting shareholders  
26 entitled to payment for their shares under this code; or

27 (ii) is not the purchase or redemption of

1 its own shares by a consuming assets corporation; or

2 (B) the surplus of the corporation for a  
3 distribution not described by Paragraph (A).

4 (2) "Distribution limit," with respect to a  
5 distribution that is a purchase or redemption of its own shares by  
6 an investment company the certificate of formation of which  
7 provides that the company may purchase the company's own shares out  
8 of stated capital, means the net assets of the investment company  
9 rather than the surplus of the investment company.

10 (3) "Investment company" means a corporation  
11 registered as an open-end company under the Investment Company Act.  
12 (TBCA 2.38.C.)

13 Sec. 21.302. AUTHORITY FOR DISTRIBUTIONS. The board of  
14 directors of a corporation may authorize a distribution and the  
15 corporation may make a distribution, subject to Section 21.303.  
16 (TBCA 2.38.A.)

17 Sec. 21.303. LIMITATIONS ON DISTRIBUTIONS. (a) A  
18 corporation may not make a distribution that violates the  
19 corporation's certificate of formation.

20 (b) Unless the distribution is made in compliance with  
21 Chapter 11, a corporation may not make a distribution:

22 (1) if the corporation would be insolvent after the  
23 distribution; or

24 (2) that exceeds the distribution limit. (TBCA  
25 2.38.A, B, D.)

26 Sec. 21.304. REDEMPTIONS. (a) A distribution by a  
27 corporation that involves a redemption of outstanding redeemable

1 shares of the corporation subject to redemption may be related to  
2 any or all of those shares.

3 (b) If less than all of the outstanding redeemable shares of  
4 a corporation subject to redemption are to be redeemed, the shares  
5 to be redeemed shall be selected for redemption:

6 (1) in accordance with the corporation's certificate  
7 of formation; or

8 (2) ratably or by lot in the manner prescribed by  
9 resolution of the corporation's board of directors, if the  
10 certificate of formation does not specify how shares are to be  
11 selected for redemption.

12 (c) A redemption of redeemable shares takes effect by call  
13 and written notice of the redemption of the shares. (TBCA 4.08.A  
14 (part).)

15 Sec. 21.305. NOTICE OF REDEMPTION. (a) A notice of  
16 redemption of redeemable shares of a corporation must state:

17 (1) the class or series of shares or part of the class  
18 or series of shares to be redeemed;

19 (2) the date set for redemption;

20 (3) the redemptive price; and

21 (4) the place at which the shareholders may obtain  
22 payment of the redemptive price.

23 (b) The notice of redemption shall be sent to each holder of  
24 redeemable shares being called not later than the 21st day or  
25 earlier than the 60th day before the date set for redemption.

26 (c) A notice that is mailed is considered to have been sent  
27 when the notice is deposited in the United States mail, with postage

1 prepaid, addressed to the shareholder at the shareholder's address  
2 as it appears on the share transfer records of the corporation.

3 (d) A corporation may give the transfer agent described by  
4 Section 21.306 irrevocable instructions to send or complete the  
5 notice of redemption. (TBCA 4.08.A (part), B.)

6 Sec. 21.306. DEPOSIT OF MONEY FOR REDEMPTION. (a) After the  
7 date the notice of redemption required by Section 21.305 is sent and  
8 before the day after the date set for redemption of redeemable  
9 shares of the corporation, a corporation may deposit with a bank or  
10 trust company in this or another state of the United States  
11 appointed and acting as transfer agent for the corporation an  
12 amount sufficient to redeem the shares called for redemption. The  
13 amount must be deposited as a trust fund.

14 (b) Unless the corporation's certificate of formation  
15 provides otherwise, if a corporation deposits money and gives  
16 payment instructions in accordance with Subsection (a) and Section  
17 21.307(b):

18 (1) the shares called for redemption are considered  
19 redeemed, and distributions on those shares cease to accrue on and  
20 after the date set for redemption; and

21 (2) the deposit constitutes full payment of the shares  
22 called for redemption to the holders of the shares on and after the  
23 date set for redemption.

24 (c) Unless the certificate of formation provides otherwise,  
25 after the date a deposit is made and instructions are given under  
26 this section and Section 21.307(b), the shares called for  
27 redemption are not considered outstanding, and the holders of the

1 shares cease to be shareholders of the shares and have no right with  
2 respect to the shares other than:

3 (1) the right to receive payment of the redemptive  
4 price of the shares without interest from the bank or trust company;  
5 and

6 (2) any right to convert those shares.

7 (d) Unless the certificate of formation provides otherwise,  
8 a bank or trust company receiving a deposit under this section shall  
9 pay to the corporation on demand the balance of the amount deposited  
10 if one or more holders of the shares called for redemption do not  
11 claim for redemption the amount deposited on or before the sixth  
12 anniversary of the date of the deposit. After making a payment  
13 under this subsection, the bank or trust company is relieved of all  
14 responsibility to the holders with respect to the amount deposited.  
15 (TBCA 4.08.B (part).)

16 Sec. 21.307. PAYMENT OF REDEEMED SHARES. (a) Payment of a  
17 certificated share shall be made only on the surrender of the  
18 respective share certificate.

19 (b) A corporation may give a transfer agent described by  
20 Section 21.306 irrevocable instructions to pay, on or after the  
21 date set for redemption of redeemable shares, the redemptive price  
22 to the respective holders of the shares as evidenced by a list of  
23 shareholders certified by an officer of the corporation. (TBCA  
24 4.08.B (part).)

25 Sec. 21.308. PRIORITY OF DISTRIBUTIONS. (a) Except as  
26 provided by Subsection (b) or (c), a corporation's indebtedness  
27 that arises as a result of the declaration of a distribution and a

1 corporation's indebtedness issued in a distribution are at parity  
2 with the corporation's indebtedness to its general, unsecured  
3 creditors.

4 (b) The indebtedness described by Subsection (a) shall be  
5 subordinated to the extent required by an agreement binding on the  
6 corporation on the date the indebtedness arises or if agreed to by  
7 the person to whom the indebtedness is owed or, with respect to  
8 indebtedness issued in a distribution, as provided by the  
9 corporation.

10 (c) The indebtedness described by Subsection (a) shall be  
11 secured to the extent required by an agreement binding on the  
12 corporation. (TBCA 2.38.E.)

13 Sec. 21.309. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM  
14 SURPLUS. (a) A corporation, by resolution of the board of directors  
15 of the corporation, may:

16 (1) create a reserve out of the surplus of the  
17 corporation; or

18 (2) designate or allocate in any manner a part or all  
19 of the corporation's surplus for a proper purpose.

20 (b) A corporation may increase, decrease, or abolish a  
21 reserve, designation, or allocation in the manner provided by  
22 Subsection (a). (TBCA 4.13.)

23 Sec. 21.310. AUTHORITY FOR SHARE DIVIDENDS. The board of  
24 directors of a corporation may authorize a share dividend and the  
25 corporation may pay a share dividend subject to Section 21.311 and  
26 any restriction in its certificate of formation. (TBCA 2.38-1.A.)

27 Sec. 21.311. LIMITATIONS ON SHARE DIVIDENDS. A corporation

1 may not pay a share dividend in authorized but unissued shares of  
2 any class if:

3 (1) the surplus of the corporation is less than the  
4 amount required by Section 21.313 to be transferred to stated  
5 capital at the time the share dividend is made; or

6 (2) the share dividend will be made to a holder of  
7 shares of any other class or series, unless:

8 (A) the corporation's certificate of formation  
9 provides for the dividend; or

10 (B) the share dividend is authorized by the  
11 holders of at least a majority of the outstanding shares of the  
12 class or series in which the share dividend is to be made. (TBCA  
13 2.38-1.B, E.)

14 Sec. 21.312. VALUE OF SHARES ISSUED AS SHARE DIVIDENDS. (a)  
15 A share dividend payable in authorized but unissued shares with par  
16 value shall be issued at the par value of the respective share.

17 (b) A share dividend payable in authorized but unissued  
18 shares without par value shall be issued at the value set by the  
19 board of directors when the share dividend is authorized. (TBCA  
20 2.38-1.C (part), D (part).)

21 Sec. 21.313. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a)  
22 When a share dividend payable in authorized but unissued shares  
23 with par value is made by a corporation, an amount of surplus  
24 designated by the corporation's board of directors that is not less  
25 than the aggregate par value of the shares issued as a share  
26 dividend shall be transferred to stated capital.

27 (b) When a share dividend payable in authorized but unissued

1 shares without par value is made by a corporation, an amount of  
2 surplus equal to the aggregate value set by the corporation's board  
3 of directors with respect to shares under Section 21.312(b) shall  
4 be transferred to stated capital. (TBCA 2.38-1.C (part), D (part).)

5       Sec. 21.314. DETERMINATION OF SOLVENCY, NET ASSETS, STATED  
6 CAPITAL, AND SURPLUS. (a) For purposes of this subchapter, the  
7 determination of whether a corporation is or would be insolvent and  
8 the determination of the value of a corporation's net assets,  
9 stated capital, or surplus and each of the components of net assets,  
10 stated capital, or surplus may be based on:

11           (1) financial statements of the corporation,  
12 including financial statements that:

13                   (A) include subsidiary corporations or other  
14 corporations accounted for on a consolidated basis or on the equity  
15 method of accounting; or

16                   (B) present the financial condition of the  
17 corporation in accordance with generally accepted accounting  
18 principles;

19           (2) financial statements prepared using the method of  
20 accounting used to file the corporation's federal income tax return  
21 or using any other accounting practices and principles that are  
22 reasonable under the circumstances;

23           (3) financial information, including condensed or  
24 summary financial statements, that is prepared on the same basis as  
25 financial statements described by Subdivision (1) or (2);

26           (4) projection, forecast, or other forward-looking  
27 information relating to the future economic performance, financial



1 condition, or liquidity of the corporation that is reasonable under  
2 the circumstances;

3 (5) a fair valuation or information from any other  
4 method that is reasonable under the circumstances; or

5 (6) a combination of a statement, valuation, or  
6 information authorized by this section.

7 (b) Subsection (a) does not apply to the computation of the  
8 Texas franchise tax or any other tax imposed on a corporation under  
9 the laws of this state. (TBCA 2.38-3.)

10 Sec. 21.315. DATE OF DETERMINATION OF SOLVENCY, NET ASSETS,  
11 STATED CAPITAL, AND SURPLUS. (a) For purposes of this subchapter, a  
12 determination of whether a corporation is or would be insolvent  
13 after a distribution or share dividend or a determination of the  
14 value of a corporation's net assets, stated capital, or surplus, or  
15 each component of net assets, stated capital, or surplus, shall be  
16 made:

17 (1) on the date the distribution or share dividend is  
18 authorized by the corporation's board of directors if the  
19 distribution or share dividend is made not later than the 120th day  
20 after the date of authorization; or

21 (2) if the distribution or share dividend is made more  
22 than 120 days after the date of authorization:

23 (A) on the date designated by the corporation's  
24 board of directors if the date so designated is not earlier than 120  
25 days before the date the distribution or share dividend is made; or

26 (B) on the date the distribution or share  
27 dividend is made if the corporation's board of directors does not

1 designate a date as described in Paragraph (A).

2 (b) For purposes of this section, a distribution that  
3 involves:

4 (1) the incurrence by a corporation of indebtedness or  
5 a deferred payment obligation is considered to have been made on the  
6 date the indebtedness or obligation is incurred; or

7 (2) a requirement in the corporation's certificate of  
8 formation or other contract of the corporation to redeem, exchange,  
9 or otherwise acquire any of its own shares is considered to have  
10 been made either on the date when the provision or other contract is  
11 made or takes effect or on the date when the shares to be redeemed,  
12 exchanged, or acquired are redeemed, exchanged, or acquired, at the  
13 option of the corporation. (TBCA 2.38-4.)

14 Sec. 21.316. LIABILITY OF DIRECTORS FOR WRONGFUL  
15 DISTRIBUTIONS. (a) Subject to Subsection (c), the directors of a  
16 corporation who vote for or assent to a distribution by the  
17 corporation that is prohibited by Section 21.303 are jointly and  
18 severally liable to the corporation for the amount by which the  
19 distribution exceeds the amount permitted by that section to be  
20 distributed.

21 (b) A director is not liable for all or part of the excess  
22 amount if a distribution of that amount would have been permitted by  
23 Section 21.303 after the date the director authorized the  
24 distribution.

25 (c) A director is not jointly and severally liable under  
26 Subsection (a) if, in voting for or assenting to the distribution,  
27 the director:

1 (1) relies in good faith and with ordinary care on:

2 (A) the statements, valuations, or information  
3 described by Section 21.314; or

4 (B) other information, opinions, reports, or  
5 statements, including financial statements and other financial  
6 data, concerning the corporation or another person that are  
7 prepared or presented by:

8 (i) one or more officers or employees of the  
9 corporation;

10 (ii) a legal counsel, public accountant,  
11 investment banker, or other person relating to a matter the  
12 director reasonably believes is within the person's professional or  
13 expert competence; or

14 (iii) a committee of the board of directors  
15 of which the director is not a member;

16 (2) acting in good faith and with ordinary care,  
17 considers the assets of the corporation to be valued at least at  
18 their book value; or

19 (3) in determining whether the corporation made  
20 adequate provision for payment, satisfaction, or discharge of all  
21 of the corporation's liabilities and obligations, as provided by  
22 Sections 11.053 and 11.356, relies in good faith and with ordinary  
23 care on financial statements of, or other information concerning, a  
24 person who was or became contractually obligated to pay, satisfy,  
25 or discharge some or all of the corporation's liabilities or  
26 obligations.

27 (d) The liability imposed under Subsection (a) is the only

1 liability of a director to the corporation or its creditors for  
2 authorizing a distribution that is prohibited by Section 21.303.

3 (e) This section and Sections 21.317 and 21.318 do not limit  
4 any liability imposed under Chapter 24, Business & Commerce Code,  
5 or the United States Bankruptcy Code. (TBCA 2.41.A(1), C, G  
6 (part).)

7 Sec. 21.317. STATUTE OF LIMITATIONS ON ACTION FOR WRONGFUL  
8 DISTRIBUTION. An action may not be brought against a director of a  
9 corporation under Section 21.316 after the second anniversary of  
10 the date the alleged act giving rise to the liability occurred.  
11 (TBCA 2.41.A(3).)

12 Sec. 21.318. CONTRIBUTION FROM CERTAIN SHAREHOLDERS AND  
13 DIRECTORS. (a) A director who is held liable for a claim asserted  
14 under Section 21.316 is entitled to receive contributions from  
15 shareholders who accepted or received the wrongful distribution  
16 knowing that it was prohibited by Section 21.303 in proportion to  
17 the amounts received by the shareholders.

18 (b) A director who is liable for a claim asserted under  
19 Section 21.316 is entitled to receive contributions from each of  
20 the other directors who are liable with respect to that claim in an  
21 amount appropriate to achieve equity.

22 (c) The liability provided by Subsection (a) is the only  
23 liability of a shareholder to the corporation or a creditor of the  
24 corporation for accepting or receiving a distribution by the  
25 corporation that is prohibited by Section 21.303, except for any  
26 liability under Chapter 24, Business & Commerce Code, or the United  
27 States Bankruptcy Code. (TBCA 2.41.E, F, G (part).)

1 [Sections 21.319-21.350 reserved for expansion]

2 SUBCHAPTER H. SHAREHOLDERS' MEETINGS; VOTING AND QUORUM

3 Sec. 21.351. ANNUAL MEETING. (a) An annual meeting of the  
4 shareholders of a corporation shall be held at a time that is stated  
5 in or set in accordance with the corporation's bylaws.

6 (b) On the application of a shareholder who has previously  
7 submitted a written request to the corporation that an annual  
8 meeting be held, a court in the county in which the principal  
9 executive office of the corporation is located may order a meeting  
10 to be held if the annual meeting is not held or written consent  
11 instead of the annual meeting is not executed within any 13-month  
12 period, unless the meeting is not required to be held under Section  
13 21.655.

14 (c) The failure to hold an annual meeting at the designated  
15 time does not result in the winding up or termination of the  
16 corporation. (TBCA 2.24.B.)

17 Sec. 21.352. SPECIAL MEETINGS. (a) A special meeting of the  
18 shareholders of a corporation may be called by:

19 (1) the president, the board of directors, or any  
20 other person authorized to call special meetings by the certificate  
21 of formation or bylaws of the corporation; or

22 (2) the holders of the percentage of shares specified  
23 in the certificate of formation, not to exceed 50 percent of the  
24 shares entitled to vote or, if no percentage is specified, at least  
25 10 percent of all of the shares of the corporation entitled to vote  
26 at the proposed special meeting.

27 (b) Unless stated in or set in accordance with the bylaws,

1 the record date for determining which shareholders of the  
2 corporation are entitled to call a special meeting is the date the  
3 first shareholder signs the notice of that meeting.

4 (c) Other than procedural matters, the only business that  
5 may be conducted at a special meeting of the shareholders is  
6 business that is within the purposes described in the notice  
7 required by Section 21.353. (TBCA 2.24.C.)

8 Sec. 21.353. NOTICE OF MEETING. (a) Except as provided by  
9 Section 21.456, written notice of a meeting in accordance with  
10 Section 6.051 shall be given to each shareholder entitled to vote at  
11 the meeting not later than the 10th day and not earlier than the  
12 60th day before the date of the meeting. Notice shall be given at  
13 the direction of the president, secretary, or other person calling  
14 the meeting.

15 (b) The notice of a special meeting must contain a statement  
16 regarding the purpose or purposes of the meeting. (TBCA 2.25.A.)

17 Sec. 21.354. INSPECTION OF VOTING LIST. (a) The list of  
18 shareholders entitled to vote at the meeting prepared under Section  
19 21.372 shall be:

20 (1) subject to inspection by a shareholder during  
21 regular business hours; and

22 (2) produced and kept open at the meeting.

23 (b) The original share transfer records are prima facie  
24 evidence of which shareholders are entitled to inspect the list.  
25 (TBCA 2.27.A (part).)

26 Sec. 21.355. CLOSING OF SHARE TRANSFER RECORDS. Share  
27 transfer records that are closed in accordance with Section 6.101

1 for the purpose of determining which shareholders are entitled to  
2 receive notice of a meeting of shareholders shall remain closed for  
3 at least 10 days immediately preceding the date of the meeting.  
4 (TBCA 2.26.B (part).)

5 Sec. 21.356. RECORD DATE FOR WRITTEN CONSENT TO ACTION. The  
6 record date provided in accordance with Section 6.102(a) may not be  
7 more than 10 days after the date on which the board of directors  
8 adopts the resolution setting the record date. (TBCA 2.26.C  
9 (part).)

10 Sec. 21.357. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN  
11 CONSENT TO ACTION. The record date provided by the directors in  
12 accordance with Section 6.101 must be at least 10 days before the  
13 date on which the particular action requiring the determination of  
14 shareholders is to be taken. (TBCA 2.26.B (part).)

15 Sec. 21.358. QUORUM. (a) Subject to Subsection (b), the  
16 holders of the majority of the shares entitled to vote at a meeting  
17 of the shareholders of a corporation that are present or  
18 represented by proxy at the meeting are a quorum for the  
19 consideration of a matter to be presented at that meeting.

20 (b) The certificate of formation of a corporation may  
21 provide that a quorum is present only if:

22 (1) the holders of a specified portion of the shares  
23 that is greater than the majority of the shares entitled to vote are  
24 represented at the meeting in person or by proxy; or

25 (2) the holders of a specified portion of the shares  
26 that is less than the majority but not less than one-third of the  
27 shares entitled to vote are represented at the meeting in person or

1 by proxy.

2 (c) Unless provided by the certificate of formation or  
3 bylaws of the corporation, after a quorum is present at a meeting of  
4 shareholders, the shareholders may conduct business properly  
5 brought before the meeting until the meeting is adjourned. The  
6 subsequent withdrawal from the meeting of a shareholder or the  
7 refusal of a shareholder present at or represented by proxy at the  
8 meeting to vote does not negate the presence of a quorum at the  
9 meeting.

10 (d) Unless provided by the certificate of formation or  
11 bylaws, the shareholders of the corporation at a meeting at which a  
12 quorum is not present may adjourn the meeting until the time and to  
13 the place as may be determined by a vote of the holders of the  
14 majority of the shares who are present or represented by proxy at  
15 the meeting. (TBCA 2.28.A.)

16 Sec. 21.359. VOTING IN ELECTION OF DIRECTORS. (a) Subject  
17 to Subsection (b), directors of a corporation shall be elected by a  
18 plurality of the votes cast by the holders of shares entitled to  
19 vote in the election of directors at a meeting of shareholders at  
20 which a quorum is present.

21 (b) The certificate of formation or bylaws of a corporation  
22 may provide that a director of a corporation shall be elected only  
23 if the director receives:

24 (1) the vote of the holders of a specified portion, but  
25 not less than the majority, of the shares entitled to vote in the  
26 election of directors;

27 (2) the vote of the holders of a specified portion, but



1 not less than the majority, of the shares entitled to vote in the  
2 election of directors and represented in person or by proxy at a  
3 meeting of shareholders at which a quorum is present; or

4 (3) the vote of the holders of a specified portion, but  
5 not less than the majority, of the votes cast by the holders of  
6 shares entitled to vote in the election of directors at a meeting of  
7 shareholders at which a quorum is present. (TBCA 2.28.C.)

8 Sec. 21.360. NO CUMULATIVE VOTING RIGHT UNLESS AUTHORIZED.

9 Except as provided by Section 21.361 or 21.362, a shareholder does  
10 not have the right to cumulate the shareholder's vote in the  
11 election of directors. (New.)

12 Sec. 21.361. CUMULATIVE VOTING IN ELECTION OF DIRECTORS.

13 (a) If expressly authorized by a corporation's certificate of  
14 formation in general or with respect to a specified class or series  
15 of shares or group of classes or series of shares and subject to  
16 Subsections (b) and (c), at each election of directors of the  
17 corporation each shareholder entitled to vote at the election is  
18 entitled to:

19 (1) vote the number of shares owned by the shareholder  
20 for as many candidates as there are directors to be elected and for  
21 whose election the shareholder is entitled to vote; or

22 (2) cumulate votes by:

23 (A) giving one candidate as many votes as the  
24 total of the number of the directors to be elected multiplied by the  
25 shareholder's shares; or

26 (B) distributing the votes among one or more  
27 candidates using the same principle.

1           (b) Cumulative voting permitted by the certificate of  
2 formation is permitted only in an election of directors in which a  
3 shareholder who intends to cumulate votes has given written notice  
4 of that intention to the secretary of the corporation on or before  
5 the day preceding the date of the election at which the shareholder  
6 intends to cumulate votes.

7           (c) All shareholders entitled to vote cumulatively may  
8 cumulate their votes if a shareholder gives the notice required by  
9 Subsection (b). (TBCA 2.29.D.)

10           Sec. 21.362. CUMULATIVE VOTING RIGHT IN CERTAIN  
11 CORPORATIONS. Except as provided by the corporation's certificate  
12 of formation, a shareholder of a corporation incorporated before  
13 the effective date of this code has the right to cumulatively vote  
14 the number of shares the shareholder owns in the election of  
15 directors to the extent permitted and in the manner provided by  
16 Section 21.361. A corporation may limit or deny a shareholder's  
17 right to cumulatively vote shares at any time after the effective  
18 date of this code by amending its certificate of formation. (New.)

19           Sec. 21.363. VOTING ON MATTERS OTHER THAN ELECTION OF  
20 DIRECTORS. (a) Subject to Subsection (b), with respect to a matter  
21 other than the election of directors or a matter for which the  
22 affirmative vote of the holders of a specified portion of the shares  
23 entitled to vote is required by this code, the affirmative vote of  
24 the holders of the majority of the shares entitled to vote on, and  
25 who voted for, against, or expressly abstained with respect to, the  
26 matter at a shareholders' meeting of a corporation at which a quorum  
27 is present is the act of the shareholders.

1           (b) With respect to a matter other than the election of  
2 directors or a matter for which the affirmative vote of the holders  
3 of a specified portion of the shares entitled to vote is required by  
4 this code, the certificate of formation or bylaws of a corporation  
5 may provide that the act of the shareholders of the corporation is:

6           (1) the affirmative vote of the holders of a specified  
7 portion, but not less than the majority, of the shares entitled to  
8 vote on that matter;

9           (2) the affirmative vote of the holders of a specified  
10 portion, but not less than the majority, of the shares entitled to  
11 vote on that matter and represented in person or by proxy at a  
12 shareholders' meeting at which a quorum is present;

13           (3) the affirmative vote of the holders of a specified  
14 portion, but not less than the majority, of the shares entitled to  
15 vote on, and who voted for or against, the matter at a shareholders'  
16 meeting at which a quorum is present; or

17           (4) the affirmative vote of the holders of a specified  
18 portion, but not less than the majority, of the shares entitled to  
19 vote on, and who voted for, against, or expressly abstained with  
20 respect to, the matter at a shareholders' meeting at which a quorum  
21 is present. (TBCA 2.28.B.)

22           Sec. 21.364. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.

23           (a) In this section, a "fundamental action" means:

24           (1) an amendment of a certificate of formation;

25           (2) a voluntary winding up under Chapter 11;

26           (3) a revocation of a voluntary decision to wind up  
27 under Section 11.151;

1           (4) a cancellation of an event requiring winding up  
2 under Section 11.152; or

3           (5) a reinstatement under Section 11.202.

4           (b) Except as otherwise provided by this code or the  
5 certificate of formation or bylaws of a corporation in accordance  
6 with Section 21.363, the vote required for approval of a  
7 fundamental action by the shareholders is the affirmative vote of  
8 the holders of at least two-thirds of the outstanding shares  
9 entitled to vote on the fundamental action.

10          (c) If a class or series of shares is entitled to vote as a  
11 class or series on a fundamental action, the vote required for  
12 approval of the action by the shareholders is the affirmative vote  
13 of the holders of at least two-thirds of the outstanding shares in  
14 each class or series of shares entitled to vote on the action as a  
15 class or series and at least two-thirds of the outstanding shares  
16 otherwise entitled to vote on the action. Shares entitled to vote  
17 as a class or series shall be entitled to vote only as a class or  
18 series unless otherwise entitled to vote on each matter submitted  
19 to the shareholders generally or otherwise provided by the  
20 certificate of formation.

21          (d) Unless an amendment to the certificate of formation is  
22 undertaken by the board of directors under Section 21.155, separate  
23 voting by a class or series of shares of a corporation is required  
24 for approval of an amendment to the certificate of formation that  
25 would result in:

26           (1) the increase or decrease of the aggregate number  
27 of authorized shares of the class or series;

1           (2) the increase or decrease of the par value of the  
2 shares of the class or series, including changing shares with par  
3 value into shares without par value or changing shares without par  
4 value into shares with par value;

5           (3) effecting an exchange, reclassification, or  
6 cancellation of all or part of the shares of the class or series;

7           (4) effecting an exchange or creating a right of  
8 exchange of all or part of the shares of another class or series  
9 into the shares of the class or series;

10          (5) the change of the designations, preferences,  
11 limitations, or relative rights of the shares of the class or  
12 series;

13          (6) the change of the shares of the class or series,  
14 with or without par value, into the same or a different number of  
15 shares, with or without par value, of the same class or series or  
16 another class or series;

17          (7) the creation of a new class or series of shares  
18 with rights and preferences equal, prior, or superior to the shares  
19 of the class or series;

20          (8) increasing the rights and preferences of a class  
21 or series with rights and preferences equal, prior, or superior to  
22 the shares of the class or series;

23          (9) increasing the rights and preferences of a class  
24 or series with rights or preferences later or inferior to the shares  
25 of the class or series in such a manner that the rights or  
26 preferences will be equal, prior, or superior to the shares of the  
27 class or series;

1           (10) dividing the shares of the class into series and  
2 setting and determining the designation of the series and the  
3 variations in the relative rights and preferences between the  
4 shares of the series;

5           (11) the limitation or denial of existing preemptive  
6 rights or cumulative voting rights of the shares of the class or  
7 series;

8           (12) canceling or otherwise affecting the dividends on  
9 the shares of the class or series that have accrued but have not  
10 been declared; or

11           (13) the inclusion or deletion from the certificate of  
12 formation of provisions required or permitted to be included in the  
13 certificate of formation of a close corporation under Subchapter O.

14           (e) The vote required under Subsection (d) by a class or  
15 series of shares of a corporation is required notwithstanding that  
16 shares of that class or series do not otherwise have a right to vote  
17 under the certificate of formation.

18           (f) Unless otherwise provided by the certificate of  
19 formation, if the holders of the outstanding shares of a class that  
20 is divided into series are entitled to vote as a class on a proposed  
21 amendment that would affect equally all series of the class, other  
22 than a series in which no shares are outstanding or a series that is  
23 not affected by the amendment, the holders of the separate series  
24 are not entitled to separate class votes.

25           (g) Unless otherwise provided by the certificate of  
26 formation, a proposed amendment to the certificate of formation  
27 that would solely effect changes in the designations, preferences,

1 limitations, or relative rights, including voting rights, of one or  
2 more series of shares of the corporation that have been established  
3 under the authority granted to the board of directors in the  
4 certificate of formation in accordance with Section 21.155 does not  
5 require the approval of the holders of the outstanding shares of a  
6 class or series other than the affected series if, after giving  
7 effect to the amendment:

8 (1) the preferences, limitations, or relative rights  
9 of the affected series may be set and determined by the board of  
10 directors with respect to the establishment of a new series of  
11 shares under the authority granted to the board of directors in the  
12 certificate of formation in accordance with Section 21.155; or

13 (2) any new series established as a result of a  
14 reclassification of the affected series are within the preferences,  
15 limitations, and relative rights that are described by Subdivision  
16 (1). (TBCA 4.02.A (part), 4.03, 6.03.A (part), 6.05.A (part).)

17 . Sec. 21.365. CHANGES IN VOTE REQUIRED FOR CERTAIN MATTERS.

18 (a) With respect to a matter for which the affirmative vote of the  
19 holders of a specified portion of the shares entitled to vote is  
20 required by this code, the certificate of formation of a  
21 corporation may provide that the affirmative vote of the holders of  
22 a specified portion, but not less than the majority, of the shares  
23 entitled to vote on that matter is required for shareholder action  
24 on that matter.

25 (b) With respect to a matter for which the affirmative vote  
26 of the holders of a specified portion of the shares of a class or  
27 series is required by this code, the certificate of formation may

1 provide that the affirmative vote of the holders of a specified  
2 portion, but not less than the majority, of the shares of that class  
3 or series is required for action of the holders of shares of that  
4 class or series on that matter.

5 (c) If a provision of the certificate of formation provides  
6 that the affirmative vote of the holders of a specified portion that  
7 is greater than the majority of the shares entitled to vote on a  
8 matter is required for shareholder action on that matter, the  
9 provision may not be amended, directly or indirectly, without the  
10 same affirmative vote unless otherwise provided by the certificate  
11 of formation.

12 (d) If a provision of the certificate of formation provides  
13 that the affirmative vote of the holders of a specified portion that  
14 is greater than the majority of the shares of a class or series is  
15 required for shareholder action on a matter, the provision may not  
16 be amended, directly or indirectly, without the same affirmative  
17 vote unless otherwise provided by the certificate of formation.

18 (TBCA 2.28.D.)

19 Sec.. 21.366. NUMBER OF VOTES PER SHARE. (a) Except as  
20 provided by the certificate of formation of a corporation or this  
21 code, each outstanding share, regardless of class, shall be  
22 entitled to one vote on each matter submitted to a vote at a  
23 shareholders' meeting.

24 (b) If the certificate of formation provides for more or  
25 less than one vote per share on a matter for all of the outstanding  
26 shares or for the shares of a class or series, each reference in  
27 this code or in the certificate of formation or bylaws, unless



1 expressly stated otherwise, to a specified portion of the shares  
2 with respect to that matter refers to the portion of the votes  
3 entitled to be cast with respect to those shares under the  
4 certificate of formation. (TBCA 2.29.A.).

5       Sec. 21.367. VOTING IN PERSON OR BY PROXY. (a) A  
6 shareholder may vote in person or by proxy executed in writing by  
7 the shareholder.

8       (b) A telegram, tēlex, cablegram, or other form of  
9 electronic transmission, including telephonic transmission, by the  
10 shareholder, or a photographic, photostatic, facsimile, or similar  
11 reproduction of a writing executed by the shareholder, is  
12 considered an execution in writing for purposes of this section.  
13 Any electronic transmission must contain or be accompanied by  
14 information from which it can be determined that the transmission  
15 was authorized by the shareholder. (TBCA 2.29.C (part); New.)

16       Sec. 21.368. TERM OF PROXY. A proxy is not valid after 11  
17 months after the date the proxy is executed unless otherwise  
18 provided by the proxy. (TBCA 2.29.C (part).)

19       Sec. 21.369. REVOCABILITY OF PROXY. (a) In this section, a  
20 "proxy coupled with an interest" includes the appointment as proxy  
21 of:

22               (1) a pledgee;

23               (2) a person who purchased or agreed to purchase the  
24 shares subject to the proxy;

25               (3) a person who owns or holds an option to purchase  
26 the shares subject to the proxy;

27               (4) a creditor of the corporation who extended the

1 corporation credit under terms requiring the appointment;

2 (5) an employee of the corporation whose employment  
3 contract requires the appointment; or

4 (6) a party to a voting agreement created under  
5 Section 6.252 or a shareholders' agreement created under Section  
6 21.101.

7 (b) A proxy is revocable unless:

8 (1) the proxy form conspicuously states that the proxy  
9 is irrevocable; and

10 (2) the proxy is coupled with an interest. (TBCA  
11 2.29.C (part).)

12 Sec. 21.370. ENFORCEABILITY OF PROXY. (a) An irrevocable  
13 proxy is specifically enforceable against the holder of shares or  
14 any successor or transferee of the holder if:

15 (1) the proxy is noted conspicuously on the  
16 certificate representing the shares subject to the proxy; or

17 (2) in the case of uncertificated shares, notation of  
18 the proxy is contained in the notice sent under Section 3.205 with  
19 respect to the shares subject to the proxy.

20 (b) An irrevocable proxy that is otherwise enforceable is  
21 ineffective against a transferee for value without actual knowledge  
22 of the existence of the irrevocable proxy at the time of the  
23 transfer or against a subsequent transferee, regardless of whether  
24 the transfer is for value, unless the proxy is:

25 (1) noted conspicuously on the certificate  
26 representing the shares subject to the proxy; or

27 (2) in the case of uncertificated shares, notation of

1 the proxy is contained in the notice sent under Section 3.205 with  
2 respect to the shares subject to the proxy.

3 (c) An irrevocable proxy shall be specifically enforceable  
4 against a person who is not a transferee for value from the time the  
5 person acquires actual knowledge of the existence of the  
6 irrevocable proxy. (TBCA 2.29.C (part).)

7 Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES. A  
8 corporation may establish in the corporation's bylaws procedures  
9 consistent with this code for determining the validity of proxies  
10 and determining whether shares that are held of record by a bank,  
11 broker, or other nominee are represented at a meeting of  
12 shareholders. The procedures may incorporate rules of and  
13 determinations made by a stock exchange or self-regulatory  
14 organization regulating the corporation or that bank, broker, or  
15 other nominee. (TBCA 2.28.E.)

16 Sec. 21.372. SHAREHOLDER MEETING LIST. (a) Not later than  
17 the 11th day before the date of each meeting of the shareholders of  
18 a corporation, an officer or agent of the corporation who is in  
19 charge of the corporation's shareholder records shall prepare an  
20 alphabetical list of the shareholders entitled to vote at the  
21 meeting or at any adjournment of the meeting. The list of  
22 shareholders must:

23 (1) state:

24 (A) the address of each shareholder;

25 (B) the type of shares held by each shareholder;

26 (C) the number of shares held by each  
27 shareholder; and

1 (D) the number of votes that each shareholder is  
2 entitled to if the number of votes is different from the number of  
3 shares stated under Paragraph (C); and

4 (2) be kept on file at the registered office or  
5 principal executive office of the corporation for at least 10 days  
6 before the date of the meeting.

7 (b) The original share transfer records of the corporation  
8 are prima facie evidence of the shareholders of the corporation  
9 entitled to vote at the meeting.

10 (c) Failure to comply with this section does not affect the  
11 validity of any action taken at a meeting of the shareholders of the  
12 corporation. (TBCA 2.27.A, B.)

13 [Sections 21.373-21.400 reserved for expansion]

14 SUBCHAPTER I. BOARD OF DIRECTORS

15 Sec. 21.401. MANAGEMENT BY BOARD OF DIRECTORS. (a) Except  
16 as provided by Section 21.101 or Subchapter O, the board of  
17 directors of a corporation shall:

18 (1) exercise or authorize the exercise of the powers  
19 of the corporation; and

20 (2) direct the management of the business and affairs  
21 of the corporation.

22 (b) In discharging the duties of director under this code or  
23 otherwise and in considering the best interests of the corporation,  
24 a director may consider the long-term and short-term interests of  
25 the corporation and the shareholders of the corporation, including  
26 the possibility that those interests may be best served by the  
27 continued independence of the corporation. (TBCA 2.31 (part),

1 13.06.)

2           Sec. 21.402. BOARD MEMBER ELIGIBILITY REQUIREMENTS. Unless  
3 the certificate of formation or bylaws of a corporation provide  
4 otherwise, a person is not required to be a resident of this state  
5 or a shareholder of the corporation to serve as a director. The  
6 certificate of formation or bylaws may prescribe other  
7 qualifications for directors. (TBCA 2.31 (part).)

8           Sec. 21.403. NUMBER OF DIRECTORS. (a) The board of  
9 directors of a corporation may consist of one or more directors.

10           (b) If the corporation is to be managed by a board of  
11 directors, the number of directors shall be set by, or in the manner  
12 provided by, the certificate of formation or bylaws of the  
13 corporation, except that the number of directors on the initial  
14 board of directors must be set by the certificate of formation.

15           (c) The number of directors may be increased or decreased by  
16 amendment to, or as provided by, the certificate of formation or  
17 bylaws. A decrease in the number of directors may not shorten the  
18 term of an incumbent director.

19           (d) If the certificate of formation or bylaws do not set the  
20 number constituting the board of directors or provide for the  
21 manner in which the number of directors must be determined, the  
22 number of directors is the same as the number constituting the  
23 initial board of directors as set by the certificate of formation.  
24 (TBCA 2.32.A (part).)

25           Sec. 21.404. DESIGNATION OF INITIAL BOARD OF DIRECTORS. If  
26 the corporation is to be managed by a board of directors, the  
27 certificate of formation of a corporation must state the names and

1 addresses of the persons constituting the initial board of  
2 directors of the corporation. (TBCA 2.32.A (part).)

3       Sec. 21.405. ELECTION OF BOARD OF DIRECTORS. (a) At the  
4 first annual meeting of shareholders of a corporation and at each  
5 subsequent annual meeting of shareholders, the holders of shares  
6 entitled to vote in the election of directors shall elect directors  
7 for the term provided under Section 21.407, except as provided by  
8 Section 21.408.

9       (b) A corporation's certificate of formation may provide  
10 that the holders of a class or series of shares or a group of classes  
11 or series of shares are entitled to elect one or more directors of  
12 the corporation. (TBCA 2.32.A (part), B (part).)

13       Sec. 21.406. SPECIAL VOTING RIGHTS OF DIRECTORS. (a) The  
14 certificate of formation of a corporation may provide that  
15 directors elected by the holders of a class or series of shares or  
16 by a group of classes or series of shares entitled to elect one or  
17 more directors, as provided by Section 21.405, are entitled to cast  
18 more or less than one vote on specified matters.

19       (b) Unless expressly stated otherwise, each reference in  
20 this code or in a corporation's certificate of formation or bylaws  
21 to a specified portion of the directors means the portion of the  
22 votes entitled to be cast by the directors to which the reference  
23 applies. (TBCA 2.32.B (part).)

24       Sec. 21.407. TERM OF OFFICE. Unless otherwise provided by  
25 this subchapter or removed in accordance with Section 21.409, the  
26 term of office of a director extends from the date the director is  
27 elected and qualified or named in the corporation's certificate of

1 formation until the next annual meeting of shareholders and until  
2 the director's successor is elected and qualified. (TBCA 2.32.A  
3 (part), B (part).)

4       Sec. 21.408. SPECIAL TERMS OF OFFICE. (a) The certificate  
5 of formation or bylaws of a corporation may provide that all or some  
6 of the board of directors may be divided into two or three classes  
7 that shall include the same or a similar number of directors as each  
8 other class and that have staggered terms of office.

9       (b) The terms of office of the initial directors  
10 constituting the first class expire at the first annual meeting of  
11 shareholders after the election of those directors. The terms of  
12 office of the initial directors constituting the second class  
13 expire at the second annual meeting of shareholders after election  
14 of those directors. The terms of office of the initial directors  
15 constituting the third class, if any, expire at the third annual  
16 meeting of shareholders after election of those directors.

17       (c) If the certificate of formation or bylaws provide for  
18 staggered terms of directors, the shareholders, at each annual  
19 meeting, shall elect a number of directors equal to the number of  
20 the class of directors whose terms expire at the time of the  
21 meeting. The directors elected at an annual meeting shall hold  
22 office until the second succeeding annual meeting, if there are two  
23 classes, or until the third succeeding annual meeting, if there are  
24 three classes.

25       (d) Unless provided by the certificate of formation or a  
26 bylaw adopted by the shareholders, staggered terms for directors  
27 must be effected at a meeting of shareholders at which directors are

1 elected. Staggered terms for directors may not be effected if any  
2 shareholder has the right to cumulate votes for the election of  
3 directors and the board of directors consists of fewer than nine  
4 members.

5 (e) Directors elected by the holders of a class or series of  
6 shares or a group of classes or series of shares in accordance with  
7 the certificate of formation shall hold office for the terms  
8 specified by the certificate of formation. (TBCA 2.32.B (part),  
9 2.33.)

10 Sec. 21.409. REMOVAL OF DIRECTORS. (a) Except as otherwise  
11 provided by the certificate of formation or bylaws of a corporation  
12 or this subchapter, the shareholders of the corporation may remove  
13 a director or the entire board of directors of the corporation, with  
14 or without cause, at a meeting called for that purpose, by a vote of  
15 the holders of a specified portion, but not less than the majority,  
16 of the shares entitled to vote at an election of directors.

17 (b) If the certificate of formation entitles the holders of  
18 a class or series of shares or a group of classes or series of shares  
19 to elect one or more directors, only the holders of shares of that  
20 class, series, or group may vote on the removal of a director  
21 elected by the holders of shares of that class, series, or group.

22 (c) If the certificate of formation permits cumulative  
23 voting and less than the entire board is to be removed, a director  
24 may not be removed if the votes cast against the removal would be  
25 sufficient to elect the director if cumulatively voted at an  
26 election of the entire board of directors, or if there are classes  
27 of directors, at an election of the class of directors of which the



1 director is a part.

2 (d) In the case of a corporation the directors of which  
3 serve staggered terms, a director may not be removed except for  
4 cause unless the certificate of formation provides otherwise.  
5 (TBCA 2.32.C.)

6 Sec. 21.410. VACANCY. (a) A vacancy occurring in the  
7 initial board of directors before the issuance of shares may be  
8 filled by the affirmative vote or written consent of the majority of  
9 the organizers or by the affirmative vote of the majority of the  
10 remaining directors, even if the majority of the remaining  
11 directors constitutes less than a quorum of the board of directors.

12 (b) Except as provided by Subsection (e), a vacancy  
13 occurring in the board of directors after the issuance of shares may  
14 be filled by election at an annual or special meeting of  
15 shareholders called for that purpose or by the affirmative vote of  
16 the majority of the remaining directors, even if the majority of  
17 directors constitutes less than a quorum of the board of directors.

18 (c) The term of a director elected to fill a vacancy  
19 occurring in the board of directors, including the initial  
20 directors, is the unexpired term of the director's predecessor in  
21 office.

22 (d) Except as provided by Subsection (e), a vacancy to be  
23 filled because of an increase in the number of directors may be  
24 filled by election at an annual or special meeting of shareholders  
25 called for that purpose or by the board of directors for a term of  
26 office continuing only until the next election of one or more  
27 directors by the shareholders. During a period between two

1 successive annual meetings of shareholders, the board of directors  
2 may not fill more than two vacancies created by an increase in the  
3 number of directors.

4 (e) Unless otherwise authorized by a corporation's  
5 certificate of formation, a vacancy or a newly created vacancy in a  
6 director position that the certificate of formation entitles the  
7 holders of a class or series of shares or group of classes or series  
8 of shares to elect may be filled only:

9 (1) by the affirmative vote of the majority of the  
10 directors then in office elected by the class, series, or group;

11 (2) by the sole remaining director elected in that  
12 manner; or

13 (3) by the affirmative vote of the holders of the  
14 outstanding shares of the class, series, or group. (TBCA 2.34.)

15 Sec. 21.411. NOTICE OF MEETING. (a) Regular meetings of the  
16 board of directors of a corporation may be held with or without  
17 notice as prescribed by the corporation's bylaws.

18 (b) Special meetings of the board of directors shall be held  
19 with notice as prescribed by the bylaws.

20 (c) A notice of a board meeting is not required to specify  
21 the business to be transacted at the meeting or the purpose of the  
22 meeting, unless required by the bylaws. (TBCA 2.37.B (part).)

23 Sec. 21.412. WAIVER OF NOTICE. (a) If the bylaws of a  
24 corporation require notice of a meeting to be given to a director, a  
25 written waiver of the notice signed by the director entitled to the  
26 notice, before or after the meeting, is equivalent to the giving of  
27 the notice.

1           (b) The attendance of a director at a board meeting  
2 constitutes a waiver of notice of the meeting, unless the director  
3 attends the meeting for the express purpose of objecting to the  
4 transaction of business at the meeting because the meeting has not  
5 been lawfully called or convened.

6           (c) A waiver of notice of a board meeting is not required to  
7 specify the business to be transacted at the meeting or the purpose  
8 of the meeting, unless required by the bylaws. (TBCA 2.37.B  
9 (part).)

10           Sec. 21.413. QUORUM. (a) A quorum of the board of directors  
11 is the majority of the number of directors set or established in the  
12 manner provided by the certificate of formation or bylaws of a  
13 corporation unless the laws of this state, the certificate of  
14 formation, or the bylaws require a different number or portion.

15           (b) Neither the certificate of formation nor the bylaws may  
16 provide that less than one-third of the number of directors  
17 constitutes a quorum. (TBCA 2.35 (part).)

18           Sec. 21.414. DISSENT TO ACTION. (a) A director of a  
19 corporation who is present at a meeting of the board of directors at  
20 which action has been taken is presumed to have assented to the  
21 action taken unless:

22                   (1) the director's dissent has been entered in the  
23 minutes of the meeting;

24                   (2) the director has filed a written dissent to the  
25 action with the person acting as the secretary of the meeting before  
26 the meeting is adjourned; or

27                   (3) the director has sent a written dissent by

1 registered mail to the secretary of the corporation immediately  
2 after the meeting has been adjourned.

3 (b) A director who voted in favor of an action may not  
4 dissent to the action. (TBCA 2.41.B.)

5 Sec. 21.415. ACTION BY DIRECTORS. (a) The act of a majority  
6 of the directors present at a meeting at which a quorum is present  
7 is the act of the board of directors of a corporation, unless the  
8 act of a greater number is required by the certificate of formation  
9 or bylaws of the corporation or by this code.

10 (b) Unless otherwise provided by the certificate of  
11 formation or bylaws, a written consent stating the action taken and  
12 signed by all members of the board of directors is also an act of the  
13 board of directors. (TBCA 2.35 (part), 9.10.B (part).)

14 Sec. 21.416. COMMITTEES OF BOARD OF DIRECTORS. (a) If  
15 authorized by the certificate of formation or bylaws of a  
16 corporation, the board of directors of the corporation, by  
17 resolution adopted by the majority of the entire board of  
18 directors, may designate:

19 (1) committees composed of one or more directors; or

20 (2) directors as alternate members of committees to  
21 replace absent or disqualified committee members at a committee  
22 meeting, subject to any limitations imposed by the board of  
23 directors.

24 (b) To the extent provided by the resolution designating a  
25 committee or the certificate of formation or bylaws and subject to  
26 Subsection (c), the committee has the authority of the board of  
27 directors.

1 (c) A committee of the board of directors may not:

2 (1) amend the certificate of formation, except to:

3 (A) establish series of shares;

4 (B) increase or decrease the number of shares in  
5 a series; or

6 (C) eliminate a series of shares as authorized by  
7 Section 21.155;

8 (2) propose a reduction of stated capital under  
9 Sections 21.253 and 21.254;

10 (3) approve a plan of merger, share exchange, or  
11 conversion of the corporation;

12 (4) recommend to shareholders the sale, lease, or  
13 exchange of all or substantially all of the property and assets of  
14 the corporation not made in the usual and regular course of its  
15 business;

16 (5) recommend to the shareholders a voluntary winding  
17 up and termination or a revocation of a voluntary winding up and  
18 termination;

19 (6) amend, alter, or repeal the bylaws or adopt new  
20 bylaws;

21 (7) fill vacancies on the board of directors;

22 (8) fill vacancies on or designate alternate members  
23 of a committee of the board of directors;

24 (9) fill a vacancy to be filled because of an increase  
25 in the number of directors;

26 (10) elect or remove officers of the corporation or  
27 members or alternate members of a committee of the board of

1 directors;

2 (11) set the compensation of the members or alternate  
3 members of a committee of the board of directors; or

4 (12) alter or repeal a resolution of the board of  
5 directors that states that it may not be amended or repealed by a  
6 committee of the board of directors.

7 (d) A committee of the board of directors may authorize a  
8 distribution or the issuance of shares if authorized by the  
9 resolution designating the committee or the certificate of  
10 formation or bylaws.

11 (e) The board of directors may remove a member of a  
12 committee appointed by the board if the board determines the  
13 removal is in the best interests of the corporation. The removal of  
14 the member is without prejudice to any contract rights of the person  
15 removed. Appointment of a member of a committee does not create  
16 contract rights.

17 (f) The designation and delegation of authority to a  
18 committee of the board of directors does not relieve the board of  
19 directors or a director of responsibility imposed by law. (TBCA  
20 2.36, 9.10.B.)

21 Sec. 21.417. ELECTION OF OFFICERS. The board of directors  
22 of a corporation shall elect a president and a secretary at the time  
23 and in the manner prescribed by the corporation's bylaws. Other  
24 officers, including assistant officers and agents as deemed  
25 necessary, may be elected in accordance with Section 3.103. (TBCA  
26 2.42.A (part).)

27 Sec. 21.418. CONTRACTS OR TRANSACTIONS INVOLVING

1 INTERESTED DIRECTORS AND OFFICERS. (a) This section applies only  
2 to a contract or transaction between a corporation and:

3 (1) one or more of the corporation's directors or  
4 officers; or

5 (2) an entity or other organization in which one or  
6 more of the corporation's directors or officers:

7 (A) is a managerial official; or

8 (B) has a financial interest.

9 (b) An otherwise valid contract or transaction is valid  
10 notwithstanding that a director or officer of the corporation is  
11 present at or participates in the meeting of the board of directors,  
12 or of a committee of the board that authorizes the contract or  
13 transaction, or votes to authorize the contract or transaction, if:

14 (1) the material facts as to the relationship or  
15 interest and as to the contract or transaction are disclosed to or  
16 known by:

17 (A) the corporation's board of directors or a  
18 committee of the board of directors and the board of directors or  
19 committee in good faith authorizes the contract or transaction by  
20 the affirmative vote of the majority of the disinterested directors  
21 or committee members, regardless of whether the disinterested  
22 directors or committee members constitute a quorum; or

23 (B) the shareholders entitled to vote on the  
24 authorization of the contract or transaction, and the contract or  
25 transaction is specifically approved in good faith by a vote of the  
26 shareholders; or

27 (2) the contract or transaction is fair to the

1 corporation when the contract or transaction is authorized,  
2 approved, or ratified by the board of directors, a committee of the  
3 board of directors, or the shareholders.

4 (c) Common or interested directors of a corporation may be  
5 included in determining the presence of a quorum at a meeting of the  
6 corporation's board of directors, or a committee of the board of  
7 directors, that authorizes the contract or transaction. (TBCA  
8 2.35-1.)

9 [Sections 21.419-21.450 reserved for expansion]

10 SUBCHAPTER J. FUNDAMENTAL BUSINESS TRANSACTIONS

11 Sec. 21.451. DEFINITIONS. In this subchapter:

12 (1) "Participating shares" means shares that entitle  
13 the holders of the shares to participate without limitation in  
14 distributions.

15 (2) "Sale of all or substantially all of the assets"  
16 means the sale, lease, exchange, or other disposition, other than a  
17 pledge, mortgage, deed of trust, or trust indenture unless  
18 otherwise provided by the certificate of formation, of all or  
19 substantially all of the property and assets of a domestic  
20 corporation that is not made in the usual and regular course of the  
21 corporation's business without regard to whether the disposition is  
22 made with the goodwill of the business. The term does not include a  
23 transaction that results in the corporation directly or indirectly:

24 (A) continuing to engage in one or more  
25 businesses; or

26 (B) applying a portion of the consideration  
27 received in connection with the transaction to the conduct of a



1 business that the corporation engages in after the transaction.

2 (3) "Shares" includes a receipt or other instrument  
3 issued by a depository representing an interest in one or more  
4 shares or fractions of shares of a domestic or foreign corporation  
5 that are deposited with the depository.

6 (4) "Voting shares" means shares that entitle the  
7 holders of the shares to vote unconditionally in elections of  
8 directors. (TBCA 5.03.I(3), (5), (6), 5.09.A (part), B.)

9 Sec. 21.452. APPROVAL OF MERGER. (a) A corporation that is  
10 a party to the merger under Chapter 10 must approve the merger by  
11 complying with this section.

12 (b) The board of directors of the corporation shall adopt a  
13 resolution that:

14 (1) approves the plan of merger; and

15 (2) if shareholder approval of the merger is required  
16 by this subchapter:

17 (A) recommends that the plan of merger be  
18 approved by the shareholders of the corporation; or

19 (B) directs that the plan of merger be submitted  
20 to the shareholders for approval without recommendation if the  
21 board of directors determines for any reason not to recommend  
22 approval of the plan of merger.

23 (c) Except as otherwise provided by this subchapter or  
24 Chapter 10, the plan of merger shall be submitted to the  
25 shareholders of the corporation for approval as provided by this  
26 subchapter. The board of directors may place conditions on the  
27 submission of the plan of merger to the shareholders.

1 (d) If the board of directors approves a plan of merger  
2 required to be approved by the shareholders of the corporation but  
3 does not adopt a resolution recommending that the plan of merger be  
4 approved by the shareholders, the board of directors shall  
5 communicate to the shareholders the reason for the board's  
6 determination to submit the plan of merger without a  
7 recommendation.

8 (e) Except as provided by Chapter 10 or Sections  
9 21.457-21.459, the shareholders of the corporation shall approve  
10 the plan of merger as provided by this subchapter. (TBCA 5.03.A  
11 (part), B (part), C.)

12 Sec. 21.453. APPROVAL OF CONVERSION. (a) A corporation  
13 must approve a conversion under Chapter 10 by complying with this  
14 section.

15 (b) The board of directors of the corporation shall adopt a  
16 resolution that approves the plan of conversion and:

17 (1) recommends that the plan of conversion be approved  
18 by the shareholders of the corporation; or

19 (2) directs that the plan of conversion be submitted  
20 to the shareholders for approval without recommendation if the  
21 board of directors determines for any reason not to recommend  
22 approval of the plan of conversion.

23 (c) The plan of conversion shall be submitted to the  
24 shareholders of the corporation for approval as provided by this  
25 subchapter. The board of directors may place conditions on the  
26 submission of the plan of conversion to the shareholders.

27 (d) If the board of directors approves a plan of conversion

1 but does not adopt a resolution recommending that the plan of  
2 conversion be approved by the shareholders of the corporation, the  
3 board of directors shall communicate to the shareholders the reason  
4 for the board's determination to submit the plan of conversion  
5 without a recommendation.

6 (e) Except as provided by Sections 21.457-21.459, the  
7 shareholders of the corporation shall approve the plan of  
8 conversion as provided by this subchapter. (TBCA 5.03.B, C, 5.17.A  
9 (part).)

10 Sec. 21.454. APPROVAL OF EXCHANGE. (a) A corporation the  
11 shares of which are to be acquired in an exchange under Chapter 10  
12 must approve the exchange by complying with this section.

13 (b) The board of directors shall adopt a resolution that  
14 approves the plan of exchange and:

15 (1) recommends that the plan of exchange be approved  
16 by the shareholders of the corporation; or

17 (2) directs that the plan of exchange be submitted to  
18 the shareholders for approval without recommendation if the board  
19 of directors determines for any reason not to recommend approval of  
20 the plan of exchange.

21 (c) The plan of exchange shall be submitted to the  
22 shareholders of the corporation for approval as provided by this  
23 subchapter. The board of directors may place conditions on the  
24 submission of the plan of exchange to the shareholders.

25 (d) If the board of directors approves a plan of exchange  
26 but does not adopt a resolution recommending that the plan of  
27 exchange be approved by the shareholders of the corporation, the

1 board of directors shall communicate to the shareholders the reason  
2 for the board's determination to submit the plan of exchange to  
3 shareholders without a recommendation.

4 (e) Except as provided by Sections 21.457-21.459, the  
5 shareholders of the corporation shall approve the plan of exchange  
6 as provided by this subchapter. (TBCA 5.02.A (part), 5.03.B (part),  
7 C (part).)

8 Sec. 21.455. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF  
9 ASSETS. (a) Except as provided by the certificate of formation of a  
10 domestic corporation, a sale, lease, pledge, mortgage, assignment,  
11 transfer, or other conveyance of an interest in real property or  
12 other assets of the corporation does not require the approval or  
13 consent of the shareholders of the corporation unless the  
14 transaction constitutes a sale of all or substantially all of the  
15 assets of the corporation.

16 (b) A corporation must approve the sale of all or  
17 substantially all of its assets by complying with this section.

18 (c) The board of directors of the corporation shall adopt a  
19 resolution that approves the sale of all or substantially all of the  
20 assets of the corporation and:

21 (1) recommends that the sale of all or substantially  
22 all of the assets of the corporation be approved by the shareholders  
23 of the corporation; or

24 (2) directs that the sale of all or substantially all  
25 of the assets of the corporation be submitted to the shareholders  
26 for approval without recommendation if the board of directors  
27 determines for any reason not to recommend approval of the sale.

1           (d) The resolution proposing the sale of all or  
2 substantially all of the assets of the corporation shall be  
3 submitted to the shareholders of the corporation for approval as  
4 provided by this subchapter. The board of directors may place  
5 conditions on the submission of the proposed sale to the  
6 shareholders.

7           (e) If the board of directors approves the sale of all or  
8 substantially all of the assets of the corporation but does not  
9 adopt a resolution recommending that the proposed sale be approved  
10 by the shareholders of the corporation, the board of directors  
11 shall communicate to the shareholders the reason for the board's  
12 determination to submit the proposed sale to shareholders without a  
13 recommendation.

14           (f) The shareholders of the corporation shall approve the  
15 sale of all or substantially all of the assets of the corporation as  
16 provided by this subchapter. After the approval of the sale by the  
17 shareholders, the board of directors may abandon the sale of all or  
18 substantially all of the assets of the corporation, subject to the  
19 rights of a third party under a contract relating to the assets,  
20 without further action or approval by the shareholders. (TBCA  
21 5.09.A (part), 5.10.A (part).)

22           Sec. 21.456. GENERAL PROCEDURE FOR SUBMISSION TO  
23 SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a  
24 fundamental business transaction involving a corporation is  
25 required to be submitted to the shareholders of the corporation  
26 under this subchapter, the corporation shall notify each  
27 shareholder of the corporation that the fundamental business

1 transaction is being submitted to the shareholders for approval at  
2 a meeting of shareholders as required by this subchapter,  
3 regardless of whether the shareholder is entitled to vote on the  
4 matter.

5 (b) If the fundamental business transaction is a merger,  
6 conversion, or interest exchange, the notice required by Subsection  
7 (a) shall contain or be accompanied by a copy or summary of the plan  
8 of merger, conversion, or interest exchange, as appropriate, and  
9 the notice required by Section 10.355.

10 (c) The notice of the meeting must:

11 (1) be given not later than the 21st day before the  
12 date of the meeting; and

13 (2) state that the purpose, or one of the purposes, of  
14 the meeting is to consider the fundamental business transaction.

15 (TBCA 5.03.D, 5.10.A(3).)

16 Sec. 21.457. GENERAL VOTE REQUIREMENT FOR APPROVAL OF  
17 FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this  
18 code or the certificate of formation of a corporation in accordance  
19 with Section 21.365, the affirmative vote of the holders of at least  
20 two-thirds of the outstanding shares of the corporation entitled to  
21 vote on a fundamental business transaction is required to approve  
22 the transaction.

23 (b) Unless provided by the certificate of formation or  
24 Section 21.458, shares of a class or series that are not otherwise  
25 entitled to vote on matters submitted to shareholders generally are  
26 not entitled to vote for the approval of a fundamental business  
27 transaction.

1           (c) Except as provided by this code, if a class or series of  
2 shares of a corporation is entitled to vote on a fundamental  
3 business transaction as a class or series, in addition to the vote  
4 required under Subsection (a), the affirmative vote of the holders  
5 of at least two-thirds of the outstanding shares in each class or  
6 series of shares entitled to vote on the fundamental business  
7 transaction as a class or series is required to approve the  
8 transaction. Shares entitled to vote as a class or series shall only  
9 be entitled to vote as a class or series on the fundamental business  
10 transaction unless that class or series is otherwise entitled to  
11 vote on each matter submitted to the shareholders generally or is  
12 otherwise entitled to vote under the certificate of formation.

13           (d) Unless required by the certificate of formation,  
14 approval of a merger by shareholders is not required under this code  
15 for a corporation that is a party to the plan of merger unless that  
16 corporation is also a party to the merger. (TBCA 5.01.A (part),  
17 5.03.E, 5.10.A(4).)

18           Sec. 21.458. CLASS VOTING REQUIREMENTS FOR CERTAIN  
19 FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class  
20 or series of shares of a corporation is required for approval of a  
21 plan of merger or conversion if:

22           (1) the plan of merger or conversion contains a  
23 provision that would require approval by that class or series of  
24 shares under Section 21.364 if the provision was contained in a  
25 proposed amendment to the corporation's certificate of formation;  
26 or

27           (2) that class or series of shares is entitled under

1 the certificate of formation to vote as a class or series on the  
2 plan of merger or conversion.

3 (b) Separate voting by a class or series of shares of a  
4 corporation is required for approval of a plan of exchange if:

5 (1) shares of that class or series are to be exchanged  
6 under the terms of the plan of exchange; or

7 (2) that class or series is entitled under the  
8 certificate of formation to vote as a class or series on the plan of  
9 exchange.

10 (c) Separate voting by a class or series of shares of a  
11 corporation is required for approval of a sale of all or  
12 substantially all of the assets of a corporation if that class or  
13 series of shares is entitled under the certificate of formation to  
14 vote as a class or series on the sale of the corporation's assets.

15 (TBCA 5.03.F, 5.10.A(4) (part).)

16 Sec. 21.459. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN  
17 FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the  
18 corporation's certificate of formation, a plan of merger is not  
19 required to be approved by the shareholders of a corporation if:

20 (1) the corporation is the sole surviving corporation  
21 in the merger;

22 (2) the certificate of formation of the corporation  
23 following the merger will not differ from the corporation's  
24 certificate of formation before the merger;

25 (3) immediately after the effective date of the  
26 merger, each shareholder of the corporation whose shares were  
27 outstanding immediately before the effective date of the merger



1 will hold the same number of shares, with identical designations,  
2 preferences, limitations, and relative rights;

3 (4) the sum of the voting power of the number of voting  
4 shares outstanding immediately after the merger and the voting  
5 power of securities that may be acquired on the conversion or  
6 exercise of securities issued under the merger does not exceed by  
7 more than 20 percent the voting power of the total number of voting  
8 shares of the corporation that are outstanding immediately before  
9 the merger; and

10 (5) the sum of the number of participating shares that  
11 are outstanding immediately after the merger and the number of  
12 participating shares that may be acquired on the conversion or  
13 exercise of securities issued under the merger does not exceed by  
14 more than 20 percent the total number of participating shares of the  
15 corporation that are outstanding immediately before the merger.

16 (b) Unless required by the certificate of formation, a plan  
17 of merger effected under Section 10.005 or 10.006 does not require  
18 the approval of the shareholders of the corporation. (TBCA  
19 5.03.G.)

20 Sec. 21.460. RIGHTS OF DISSENT AND APPRAISAL. A shareholder  
21 of a domestic corporation has the rights of dissent and appraisal  
22 under Subchapter H, Chapter 10, with respect to a fundamental  
23 business transaction. (TBCA 5.11.A.)

24 Sec. 21.461. PLEDGE, MORTGAGE, DEED OF TRUST, OR TRUST  
25 INDENTURE. Except as provided by the corporation's certificate of  
26 formation:

27 (1) the board of directors of a corporation may

1 authorize a pledge, mortgage, deed of trust, or trust indenture;  
2 and

3 (2) an authorization or consent of shareholders is not  
4 required for the validity of the transaction or for any sale under  
5 the terms of the transaction. (TBCA 5.09.A (part).)

6 Sec. 21.462. CONVEYANCE BY CORPORATION. A corporation may  
7 convey real property of the corporation when authorized by  
8 appropriate resolution of the board of directors. (TBCA 5.09.A  
9 (part).)

10 [Sections 21.463-21.500 reserved for expansion]

11 SUBCHAPTER K. WINDING UP AND TERMINATION

12 Sec. 21.501. APPROVAL OF VOLUNTARY WINDING UP,  
13 REINSTATEMENT, OR REVOCATION OF VOLUNTARY WINDING UP. A corporation  
14 must approve a voluntary winding up in accordance with Chapter 11, a  
15 reinstatement in accordance with Section 11.202, a cancellation of  
16 an event requiring winding up under Section 11.152, or revocation  
17 of a voluntary decision to wind up in accordance with Section 11.151  
18 by complying with one of the procedures prescribed by this  
19 subchapter. (TBCA 6.01 (part), 6.03.A (part), 6.05.A (part).)

20 Sec. 21.502. CERTAIN PROCEDURES RELATING TO WINDING UP. To  
21 approve a voluntary winding up, a reinstatement, a cancellation of  
22 an event requiring winding up, or a revocation of a voluntary  
23 decision to wind up, a corporation must follow one of the following  
24 procedures:

25 (1) all shareholders of the corporation must consent  
26 in writing to the winding up, the reinstatement, the cancellation  
27 of an event requiring winding up, or the revocation of a voluntary

1 decision to wind up the corporation;

2 (2) if the corporation has not commenced business and  
3 has not issued any shares, a majority of the organizers or the board  
4 of directors of the corporation must adopt a resolution to wind up,  
5 to reinstate, to cancel an event requiring winding up, or to revoke  
6 a voluntary decision to wind up; or

7 (3)(A) the board of directors of the corporation must  
8 adopt a resolution:

9 (i) recommending the winding up,  
10 reinstatement, cancellation of an event requiring winding up, or  
11 revocation of a voluntary decision to wind up the corporation; and

12 (ii) directing that the winding up,  
13 reinstatement, cancellation of an event requiring winding up, or  
14 revocation of a voluntary decision to wind up the corporation be  
15 submitted to the shareholders for approval at an annual or special  
16 meeting of shareholders; and

17 (B) the shareholders must approve the action  
18 described by Paragraph (A) in accordance with Section 21.503. (TBCA  
19 6.01 (part), 6.02.A, 6.03.A (part), 6.05.A (part).)

20 Sec. 21.503. MEETING OF SHAREHOLDERS; NOTICE. (a) Each  
21 shareholder of record entitled to vote at a meeting described by  
22 Section 21.502(3)(A)(ii) must be given written notice stating that  
23 the purpose or one of the purposes of the meeting is to consider the  
24 winding up, reinstatement, cancellation of the event requiring  
25 winding up, or revocation of the voluntary decision to wind up the  
26 corporation. The notice must be given in the time and manner  
27 provided by Chapter 6 and this chapter for the giving of notice of

1 shareholders' meetings.

2 (b) A vote of shareholders entitled to vote at the meeting  
3 shall be taken on the resolution to wind up, reinstate, cancel the  
4 event requiring winding up, or revoke the voluntary decision to  
5 wind up the corporation. The shareholders must approve the  
6 resolution by the affirmative vote required by Section 21.364.  
7 (TBCA 6.03.A (part), 6.05.A (part).)

8 Sec. 21.504. RESPONSIBILITY FOR WINDING UP. If a  
9 corporation determines or is required to wind up, the directors of  
10 the corporation shall manage the process of winding up the business  
11 or affairs of the corporation. (New.)

12 [Sections 21.505-21.550 reserved for expansion]

13 SUBCHAPTER L. DERIVATIVE PROCEEDINGS

14 Sec. 21.551. DEFINITIONS. In this subchapter:

15 (1) "Derivative proceeding" means a civil suit in the  
16 right of a domestic corporation or, to the extent provided by  
17 Section 21.562, in the right of a foreign corporation.

18 (2) "Shareholder" includes a beneficial owner whose  
19 shares are held in a voting trust or by a nominee on the beneficial  
20 owner's behalf. (TBCA 5.14.A.)

21 Sec. 21.552. STANDING TO BRING PROCEEDING. A shareholder  
22 may not institute or maintain a derivative proceeding unless:

23 (1) the shareholder:

24 (A) was a shareholder of the corporation at the  
25 time of the act or omission complained of; or

26 (B) became a shareholder by operation of law from  
27 a person that was a shareholder at the time of the act or omission

1 complained of; and

2 (2) the shareholder fairly and adequately represents  
3 the interests of the corporation in enforcing the right of the  
4 corporation. (TBCA 5.14.B.)

5 Sec. 21.553. DEMAND. (a) A shareholder may not institute a  
6 derivative proceeding until the 91st day after the date a written  
7 demand is filed with the corporation stating with particularity the  
8 act, omission, or other matter that is the subject of the claim or  
9 challenge and requesting that the corporation take suitable action.

10 (b) The waiting period required by Subsection (a) before a  
11 derivative proceeding may be instituted is not required if:

12 (1) the shareholder has been previously notified that  
13 the demand has been rejected by the corporation;

14 (2) the corporation is suffering irreparable injury;  
15 or

16 (3) irreparable injury to the corporation would result  
17 by waiting for the expiration of the 90-day period. (TBCA 5.14.C.)

18 Sec. 21.554. DETERMINATION BY DIRECTORS OR INDEPENDENT  
19 PERSONS. (a) A determination of how to proceed on allegations made  
20 in a demand or petition relating to a derivative proceeding must be  
21 made by an affirmative vote of the majority of:

22 (1) the independent and disinterested directors of the  
23 corporation present at a meeting of the board of directors of the  
24 corporation at which interested directors are not present at the  
25 time of the vote if the independent and disinterested directors  
26 constitute a quorum of the board of directors;

27 (2) a committee consisting of two or more independent

1 and disinterested directors appointed by an affirmative vote of the  
2 majority of one or more independent and disinterested directors  
3 present at a meeting of the board of directors, regardless of  
4 whether the independent and disinterested directors constitute a  
5 quorum of the board of directors; or

6 (3) a panel of one or more independent and  
7 disinterested persons appointed by the court on a motion by the  
8 corporation listing the names of the persons to be appointed and  
9 stating that, to the best of the corporation's knowledge, the  
10 persons to be appointed are disinterested and qualified to make the  
11 determinations contemplated by Section 21.558.

12 (b) The court shall appoint a panel under Subsection (a)(3)  
13 if the court finds that the persons recommended by the corporation  
14 are independent and disinterested and are otherwise qualified with  
15 respect to expertise, experience, independent judgment, and other  
16 factors considered appropriate by the court under the circumstances  
17 to make the determinations. A person appointed by the court to a  
18 panel under this section may not be held liable to the corporation  
19 or the corporation's shareholders for an action taken or omission  
20 made by the person in that capacity, except for an act or omission  
21 constituting fraud or wilful misconduct. (TBCA 5.14.H.)

22 Sec. 21.555. STAY OF PROCEEDING. (a) If the domestic or  
23 foreign corporation that is the subject of a derivative proceeding  
24 commences an inquiry into the allegations made in a demand or  
25 petition and the person or group of persons described by Section  
26 21.554 is conducting an active review of the allegations in good  
27 faith, the court shall stay a derivative proceeding until the

1 review is completed and a determination is made by the person or  
2 group regarding what further action, if any, should be taken.

3 (b) To obtain a stay, the domestic or foreign corporation  
4 shall provide the court with a written statement agreeing to advise  
5 the court and the shareholder making the demand of the  
6 determination promptly on the completion of the review of the  
7 matter. A stay, on application, may be reviewed every 60 days for  
8 the continued necessity of the stay.

9 (c) If the review and determination made by the person or  
10 group is not completed before the 61st day after the stay is ordered  
11 by the court, the stay may be renewed for one or more additional  
12 60-day periods if the domestic or foreign corporation provides the  
13 court and the shareholder with a written statement of the status of  
14 the review and the reasons why a continued extension of the stay is  
15 necessary. (TBCA 5.14.D(1).)

16 Sec. 21.556. DISCOVERY. (a) If a domestic or foreign  
17 corporation proposes to dismiss a derivative proceeding under  
18 Section 21.558, discovery by a shareholder after the filing of the  
19 derivative proceeding in accordance with this subchapter shall be  
20 limited to:

21 (1) facts relating to whether the person or group of  
22 persons described by Section 21.558 is independent and  
23 disinterested;

24 (2) the good faith of the inquiry and review by the  
25 person or group; and

26 (3) the reasonableness of the procedures followed by  
27 the person or group in conducting the review.

1           (b) Discovery described by Subsection (a) may not be  
2 expanded to include a fact or substantive matter regarding the act,  
3 omission, or other matter that is the subject matter of the  
4 derivative proceeding. The scope of discovery may be expanded if  
5 the court determines after notice and hearing that a good faith  
6 review of the allegations for purposes of Section 21.558 has not  
7 been made by an independent and disinterested person or group in  
8 accordance with that section. (TBCA 5.14.D(2).)

9           Sec. 21.557. TOLLING OF STATUTE OF LIMITATIONS. A written  
10 demand filed with the corporation under Section 21.553 tolls the  
11 statute of limitations on the claim on which demand is made until  
12 the earlier of:

13                 (1) the 91st day after the date of the demand; or

14                 (2) the 31st day after the date the corporation  
15 advises the shareholder that the demand has been rejected or the  
16 review has been completed. (TBCA 5.14.E.)

17           Sec. 21.558. DISMISSAL OF DERIVATIVE PROCEEDING. (a) A  
18 court shall dismiss a derivative proceeding on a motion by the  
19 corporation if the person or group of persons described by Section  
20 21.554 determines in good faith, after conducting a reasonable  
21 inquiry and based on factors the person or group considers  
22 appropriate under the circumstances, that continuation of the  
23 derivative proceeding is not in the best interests of the  
24 corporation.

25           (b) In determining whether the requirements of Subsection  
26 (a) have been met, the burden of proof shall be on:

27                 (1) the plaintiff shareholder if:



1 (A) the majority of the board of directors  
2 consists of independent and disinterested directors at the time the  
3 determination is made;

4 (B) the determination is made by a panel of one or  
5 more independent and disinterested persons appointed under Section  
6 21.554(a)(3); or

7 (C) the corporation presents prima facie  
8 evidence that demonstrates that the directors appointed under  
9 Section 21.554(a)(2) are independent and disinterested; or

10 (2) the corporation in any other circumstance. (TBCA  
11 5.14.F.)

12 Sec. 21.559. PROCEEDING INSTITUTED AFTER DEMAND REJECTED.  
13 If a derivative proceeding is instituted after a demand is  
14 rejected, the petition must allege with particularity facts that  
15 establish that the rejection was not made in accordance with the  
16 requirements of Sections 21.554 and 21.558. (TBCA 5.14.G.)

17 Sec. 21.560. DISCONTINUANCE OR SETTLEMENT. (a) A  
18 derivative proceeding may not be discontinued or settled without  
19 court approval.

20 (b) The court shall direct that notice be given to the  
21 affected shareholders if the court determines that a proposed  
22 discontinuance or settlement may substantially affect the  
23 interests of other shareholders. (TBCA 5.14.I.)

24 Sec. 21.561. PAYMENT OF EXPENSES. (a) In this section,  
25 "expenses" means reasonable expenses incurred by a party in a  
26 derivative proceeding, including:

27 (1) attorney's fees;

1           (2) costs in pursuing an investigation of the matter  
2 that was the subject of the derivative proceeding; or

3           (3) expenses for which the domestic or foreign  
4 corporation or a corporate defendant may be required to indemnify  
5 another person.

6           (b) On termination of a derivative proceeding, the court may  
7 order:

8           (1) the domestic or foreign corporation to pay the  
9 expenses the plaintiff incurred in the proceeding if the court  
10 finds the proceeding has resulted in a substantial benefit to the  
11 domestic or foreign corporation;

12           (2) the plaintiff to pay the expenses the domestic or  
13 foreign corporation or other defendant incurred in investigating  
14 and defending the proceeding if the court finds the proceeding has  
15 been instituted or maintained without reasonable cause or for an  
16 improper purpose; or

17           (3) a party to pay the expenses incurred by another  
18 party relating to the filing of a pleading, motion, or other paper  
19 if the court finds the pleading, motion, or other paper:

20           (A) was not well grounded in fact after  
21 reasonable inquiry;

22           (B) was not warranted by existing law or a good  
23 faith argument for the extension, modification, or reversal of  
24 existing law; or

25           (C) was interposed for an improper purpose, such  
26 as to harass, cause unnecessary delay, or cause a needless increase  
27 in the cost of litigation. (TBCA 5.14.J.)

1           Sec. 21.562. APPLICATION TO FOREIGN CORPORATIONS. (a) In a  
2 derivative proceeding brought in the right of a foreign  
3 corporation, the matters covered by this subchapter are governed by  
4 the laws of the jurisdiction of incorporation of the foreign  
5 corporation, except for Sections 21.555, 21.560, and 21.561, which  
6 are procedural provisions and do not relate to the internal affairs  
7 of the foreign corporation.

8           (b) In the case of matters relating to a foreign corporation  
9 under Section 21.554, a reference to a person or group of persons  
10 described by that section refers to a person or group entitled under  
11 the laws of the jurisdiction of incorporation of the foreign  
12 corporation to review and dispose of a derivative proceeding. The  
13 standard of review of a decision made by the person or group to  
14 dismiss the derivative proceeding shall be governed by the laws of  
15 the jurisdiction of incorporation of the foreign corporation. (TBCA  
16 5.14.K.)

17           Sec. 21.563. CLOSELY HELD CORPORATION. (a) In this  
18 section, "closely held corporation" means a corporation that has:

- 19           (1) fewer than 35 shareholders; and  
20           (2) no shares listed on a national securities exchange  
21 or regularly quoted in an over-the-counter market by one or more  
22 members of a national securities association.

23           (b) Subject to Subsection (c), Sections 21.552-21.559 do  
24 not apply to a closely held corporation.

25           (c) If justice requires:

- 26           (1) a derivative proceeding brought by a shareholder  
27 of a closely held corporation may be treated by a court as a direct

1 action brought by the shareholder for the shareholder's own  
2 benefit; and

3 (2) a recovery in a direct or derivative proceeding by  
4 a shareholder may be paid directly to the plaintiff or to the  
5 corporation if necessary to protect the interests of creditors or  
6 other shareholders of the corporation. (TBCA 5.14.L.)

7 [Sections 21.564-21.600 reserved for expansion]

8 SUBCHAPTER M. AFFILIATED BUSINESS COMBINATIONS

9 Sec. 21.601. DEFINITIONS. In this subchapter:

10 (1) "Issuing public corporation" means a domestic  
11 corporation that has:

12 (A) 100 or more shareholders of record as shown  
13 by the share transfer records of the corporation;

14 (B) a class or series of the corporation's voting  
15 shares registered under the Securities Exchange Act of 1934 (15  
16 U.S.C. Section 77b et seq.), as amended; or

17 (C) a class or series of the corporation's voting  
18 shares qualified for trading in a national market system.

19 (2) "Person" includes two or more persons acting as a  
20 partnership, limited partnership, syndicate, or other group under  
21 an agreement, arrangement, or understanding, regardless of whether  
22 in writing, to acquire, hold, vote, or dispose of a corporation's  
23 shares.

24 (3) "Share acquisition date" means the date a person  
25 initially becomes an affiliated shareholder of an issuing public  
26 corporation.

27 (4) "Subsidiary" means a domestic or foreign

1 corporation or other entity of which a majority of the outstanding  
2 voting shares are owned, directly or indirectly, by an issuing  
3 public corporation.

4 (5) "Voting share" means a share of capital stock of a  
5 corporation that entitles the holder of the share to vote generally  
6 in the election of directors. (TBCA 13.02.A(6), (7), (8), (9),  
7 (10).)

8 Sec. 21.602. AFFILIATED SHAREHOLDER. (a) For purposes of  
9 this subchapter, a person, other than the issuing public  
10 corporation or a wholly owned subsidiary of the issuing public  
11 corporation, is an affiliated shareholder if the person:

12 (1) is the beneficial owner of 20 percent or more of  
13 the outstanding voting shares of the issuing public corporation; or

14 (2) during the preceding three-year period, was the  
15 beneficial owner of 20 percent or more of the outstanding voting  
16 shares of the issuing public corporation.

17 (b) To determine whether a person is an affiliated  
18 shareholder, the number of voting shares of the issuing public  
19 corporation considered outstanding includes shares considered  
20 beneficially owned by that person under Section 21.603, but does  
21 not include other unissued voting shares of the issuing public  
22 corporation that may be issuable under an agreement, arrangement,  
23 or understanding, or on exercise of conversion rights, warrants, or  
24 options. (TBCA 13.02.A(2).)

25 Sec. 21.603. BENEFICIAL OWNER OF SHARES OR SIMILAR  
26 SECURITIES. (a) For purposes of this chapter, a person is a  
27 beneficial owner of shares or similar securities if the person

1 individually, or through an affiliate or associate, beneficially  
2 owns, directly or indirectly, shares or similar securities.

3 (b) A beneficial owner of shares or similar securities is  
4 entitled, individually or through an affiliate or associate, to:

5 (1) acquire shares or similar securities that may be  
6 exercised immediately or after the passage of a certain amount of  
7 time according to an oral or written agreement, arrangement, or  
8 understanding, or on the exercise of conversion rights, exchange  
9 rights, warrants, or options;

10 (2) vote the shares or similar securities according to  
11 an oral or written agreement, arrangement, or understanding; or

12 (3) subject to Subsection (c), acquire, hold or  
13 dispose of, or vote shares or similar securities with another  
14 person who individually, or through an affiliate or associate,  
15 beneficially owns, directly or indirectly, the shares or similar  
16 securities.

17 (c) A person is not considered a beneficial owner of shares  
18 or similar securities if:

19 (1) the shares or similar securities are:

20 (A) tendered under a tender or exchange offer  
21 made by the person or an affiliate or associate of the person before  
22 the tendered shares or securities are accepted for purchase or  
23 exchange; or

24 (B) subject to an agreement, arrangement, or  
25 understanding that expressly conditions the acquisition or  
26 purchase of shares or securities on the approval of the acquisition  
27 or purchase under Section 21.606 if the person has no direct or

1 indirect rights of ownership or voting with respect to the shares or  
2 securities until the time the approval is obtained; or

3 (2) the agreement, arrangement, or understanding to  
4 vote the shares:

5 (A) arises solely from an immediately revocable  
6 proxy that authorizes the person named in the proxy to vote at a  
7 meeting of the shareholders that has been called when the proxy is  
8 delivered or at an adjournment of the meeting; and

9 (B) is not reportable on a Schedule 13D under the  
10 Securities Exchange Act of 1934 (15 U.S.C. Section 77b et seq.), as  
11 amended, or a comparable or successor report. (TBCA 13.02.A(3).)

12 Sec. 21.604. BUSINESS COMBINATION. A business combination  
13 is:

14 (1) a merger, share exchange, or conversion of an  
15 issuing public corporation or a subsidiary with:

16 (A) an affiliated shareholder;

17 (B) a foreign or domestic corporation or other  
18 entity that is, or after the merger, share exchange, or conversion  
19 would be, an affiliate or associate of the affiliated shareholder;  
20 or

21 (C) another domestic or foreign corporation or  
22 other entity, if the merger, share exchange, or conversion is  
23 caused by an affiliated shareholder, or an affiliate or associate  
24 of an affiliated shareholder, and as a result of the merger, share  
25 exchange, or conversion this subchapter does not apply to the  
26 surviving corporation or other entity;

27 (2) a sale, lease, exchange, mortgage, pledge,

1 transfer, or other disposition, in one transaction or a series of  
2 transactions, including an allocation of assets under a merger, to  
3 or with the affiliated shareholder, or an affiliate or associate of  
4 the affiliated shareholder, of assets of the issuing public  
5 corporation or a subsidiary that:

6 (A) has an aggregate market value equal to 10  
7 percent or more of the aggregate market value of all of the assets,  
8 determined on a consolidated basis, of the issuing public  
9 corporation;

10 (B) has an aggregate market value equal to 10  
11 percent or more of the aggregate market value of all of the  
12 outstanding common stock of the issuing public corporation; or

13 (C) represents 10 percent or more of the earning  
14 power or net income, determined on a consolidated basis, of the  
15 issuing public corporation;

16 (3) the issuance or transfer by an issuing public  
17 corporation or a subsidiary to an affiliated shareholder or an  
18 affiliate or associate of the affiliated shareholder, in one  
19 transaction or a series of transactions, of shares of the issuing  
20 public corporation or a subsidiary, except by the exercise of  
21 warrants or rights to purchase shares of the issuing public  
22 corporation offered, or a share dividend paid, pro rata to all  
23 shareholders of the issuing public corporation after the affiliated  
24 shareholder's share acquisition date;

25 (4) the adoption of a plan or proposal for the  
26 liquidation or dissolution of an issuing public corporation  
27 proposed by or under any agreement, arrangement, or understanding,



1 regardless of whether in writing, with an affiliated shareholder or  
2 an affiliate or associate of the affiliated shareholder;

3 (5) a reclassification of securities, including a  
4 reverse share split or a share split-up, share dividend, or other  
5 distribution of shares, a recapitalization of the issuing public  
6 corporation, a merger of the issuing public corporation with a  
7 subsidiary or pursuant to which the assets and liabilities of the  
8 issuing public corporation are allocated among two or more  
9 surviving or new domestic or foreign corporations or other  
10 entities, or any other transaction proposed by or under an  
11 agreement, arrangement, or understanding, regardless of whether in  
12 writing, with an affiliated shareholder or an affiliate or  
13 associate of the affiliated shareholder that has the effect,  
14 directly or indirectly, of increasing the proportionate ownership  
15 percentage of the outstanding shares of a class or series of voting  
16 shares or securities convertible into voting shares of the issuing  
17 public corporation that is beneficially owned by the affiliated  
18 shareholder or an affiliate or associate of the affiliated  
19 shareholder, except as a result of immaterial changes due to  
20 fractional share adjustments; or

21 (6) the direct or indirect receipt by an affiliated  
22 shareholder or an affiliate or associate of the affiliated  
23 shareholder of the benefit of a loan, advance, guarantee, pledge,  
24 or other financial assistance or a tax credit or other tax advantage  
25 provided by or through the issuing public corporation, except  
26 proportionately as a shareholder of the issuing public corporation.  
27 (TBCA 13.02.A(4).)

1           Sec. 21.605. CONTROL. (a) For purposes of this subchapter,  
2 a person has control of another person if the person has possession,  
3 directly or indirectly, of the power to direct or cause the  
4 direction of the management and policies of the other person,  
5 through the ownership of equity securities, by contract, or in  
6 another manner.

7           (b) A person's beneficial ownership of 10 percent or more of  
8 a person's outstanding voting shares or similar interests creates a  
9 presumption that the person has control of the other person, but a  
10 person is not considered to have control of another person who holds  
11 the voting shares or similar interests in good faith and not to  
12 circumvent this part, as an agent, bank, broker, nominee,  
13 custodian, or trustee for one or more beneficial owners who do not  
14 individually or as a group have control of the person. (TBCA  
15 13.02.A(5).)

16           Sec. 21.606. THREE-YEAR MORATORIUM ON CERTAIN BUSINESS  
17 COMBINATIONS. An issuing public corporation may not, directly or  
18 indirectly, enter into or engage in a business combination with an  
19 affiliated shareholder, or any affiliate or associate of the  
20 affiliated shareholder, during the three-year period immediately  
21 following the affiliated shareholder's share acquisition date  
22 unless:

23           (1) the business combination or the purchase or  
24 acquisition of shares made by the affiliated shareholder on the  
25 affiliated shareholder's share acquisition date is approved by the  
26 board of directors of the issuing public corporation before the  
27 affiliated shareholder's share acquisition date; or

1           (2) the business combination is approved, by the  
2 affirmative vote of the holders of at least two-thirds of the  
3 outstanding voting shares of the issuing public corporation not  
4 beneficially owned by the affiliated shareholder or an affiliate or  
5 associate of the affiliated shareholder, at a meeting of  
6 shareholders called for that purpose not less than six months after  
7 the affiliated shareholder's share acquisition date. Approval may  
8 not be by written consent. (TBCA 13.03.)

9           Sec. 21.607. APPLICATION OF MORATORIUM. Section 21.606 does  
10 not apply to:

11           (1) a business combination of an issuing public  
12 corporation if:

13           (A) the original articles of incorporation or  
14 original bylaws of the corporation contain a provision expressly  
15 electing not to be governed by this subchapter;

16           (B) before December 31, 1997, the corporation  
17 adopted an amendment to the articles of incorporation or bylaws of  
18 the corporation expressly electing not to be governed by this  
19 subchapter; or

20           (C) after December 31, 1997, the corporation  
21 adopts an amendment to the articles of incorporation or bylaws of  
22 the corporation, approved by the affirmative vote of the holders,  
23 other than an affiliated shareholder or an affiliate or associate  
24 of the affiliated shareholder, of at least two-thirds of the  
25 outstanding voting shares of the issuing public corporation,  
26 expressly electing not to be governed by this subchapter, except  
27 that the amendment to the articles of incorporation or bylaws takes

1 effect 18 months after the date of the vote and does not apply to a  
2 business combination of the issuing public corporation with an  
3 affiliated shareholder whose share acquisition date is on or before  
4 the effective date of the amendment;

5 (2) a business combination of an issuing public  
6 corporation with an affiliated shareholder who became an affiliated  
7 shareholder inadvertently, if the affiliated shareholder:

8 (A) as soon as practicable divests itself of a  
9 sufficient number of the voting shares of the issuing public  
10 corporation so that the affiliated shareholder no longer is the  
11 beneficial owner, directly or indirectly, of 20 percent or more of  
12 the outstanding voting shares of the issuing public corporation;  
13 and

14 (B) would not at any time within the three-year  
15 period preceding the announcement date of the business combination  
16 have been an affiliated shareholder except for the inadvertent  
17 acquisition;

18 (3) a business combination with an affiliated  
19 shareholder who was the beneficial owner of 20 percent or more of  
20 the outstanding voting shares of the issuing public corporation on  
21 December 31, 1996, and continuously until the announcement date of  
22 the business combination;

23 (4) a business combination with an affiliated  
24 shareholder who became an affiliated shareholder through a transfer  
25 of shares of the issuing public corporation by will or intestate  
26 succession and continuously was an affiliated shareholder until the  
27 announcement date of the business combination; or

1 . (5) a business combination of an issuing public  
2 corporation with a domestic wholly owned subsidiary if the domestic  
3 subsidiary is not an affiliate or associate of the affiliated  
4 shareholder for a reason other than the affiliated shareholder's  
5 beneficial ownership of voting shares in the issuing public  
6 corporation. (TBCA 13.04.)

7 Sec. 21.608. EFFECT ON OTHER ACTIONS. (a) This subchapter  
8 does not affect, directly or indirectly, the validity of another  
9 action by the board of directors of an issuing public corporation.

10 (b) This subchapter does not preclude the board of directors  
11 of an issuing public corporation from taking other action in  
12 accordance with law.

13 (c) The board of directors of an issuing public corporation  
14 does not incur liability for an election made or not made under this  
15 subchapter. (TBCA 13.05.)

16 Sec. 21.609. CONFLICTING PROVISIONS. If this subchapter  
17 conflicts with another provision of this code, this subchapter  
18 controls. (TBCA 13.07.A.)

19 Sec. 21.610. CHANGE IN VOTING REQUIREMENTS. The affirmative  
20 vote or concurrence of shareholders required for approval of an  
21 action that is required to be submitted to a vote of the  
22 shareholders under this subchapter may be increased but not  
23 decreased under Section 21.365. (TBCA 13.07.B.)

24 [Sections 21.611-21.650 reserved for expansion]

25 SUBCHAPTER N. PROVISIONS RELATING TO INVESTMENT COMPANIES

26 Sec. 21.651. DEFINITION. In this subchapter, "investment  
27 company" means a corporation registered as an open-end company

1 under the Investment Company Act. (TBCA 2.12.C(1) (part).)

2           Sec. 21.652. ESTABLISHING CLASS OR SERIES OF SHARES; CHANGE  
3 IN NUMBER OF SHARES. (a) In addition to the actions the board may  
4 undertake under Subchapters D, E, and F, the board of directors of  
5 an investment company may:

6           (1) establish classes of shares and series of unissued  
7 shares of a class by setting and determining the designations,  
8 preferences, limitations, and relative rights, including voting  
9 rights, of the shares of the class or series established under this  
10 subdivision to the same extent that the designations, preferences,  
11 limitations, and relative rights could be stated if fully stated in  
12 the certificate of formation; and

13           (2) increase or decrease the aggregate number of  
14 shares or the number of shares of, or delete from the investment  
15 company's certificate of formation, a class or series of shares the  
16 corporation has authority to issue, unless a provision has been  
17 included in the certificate of formation of the corporation after  
18 September 1, 1993, expressly prohibiting those actions by the board  
19 of directors.

20           (b). The board of directors of an investment company may not:

21           (1) decrease the number of shares in a class or series  
22 to a number that is less than the number of shares of that class or  
23 series that are outstanding at the time; or

24           (2) delete from the certificate of formation a  
25 reference to a class or series that has shares outstanding at the  
26 time.

27           (c) To establish a class or series under this section, the

1 board of directors must adopt a resolution stating the designation  
2 of the class or series and setting and determining the  
3 designations, preferences, limitations, and relative rights,  
4 including voting rights, of the class or series.

5 (d) To increase or decrease the number of shares of a class  
6 or series of shares or to delete from the certificate of formation a  
7 reference to a class or series of shares, the board of directors of  
8 an investment company must adopt a resolution setting and  
9 determining the new number of shares of each class or series in  
10 which the number of shares is increased or decreased or deleting the  
11 class or series and any reference to the class or series from the  
12 certificate of formation. The shares of a series removed from the  
13 certificate of formation shall resume the status of authorized but  
14 unissued shares of the class of shares from which the series was  
15 established unless otherwise provided by the resolution or the  
16 certificate of formation of the investment company. (TBCA  
17 2.12.C(1).)

18 Sec. 21.653. REQUIRED STATEMENT RELATING TO SHARES. (a)  
19 Before the first issuance of shares of a class or series established  
20 or increased or decreased by resolution adopted by the board of  
21 directors of an investment company under Section 21.652, and to  
22 delete from the investment company's certificate of formation a  
23 class or series of shares and all references to the class or series  
24 contained in the certificate of formation, the investment company  
25 shall file with the secretary of state a statement that contains:

- 26 (1) the name of the investment company;  
27 (2) if the statement relates to the establishment of a

1 class or series of shares, a copy of the resolution establishing and  
2 designating the class or series or establishing and designating the  
3 class or series and setting and determining the preferences,  
4 limitations, and relative rights of the class or series;

5 (3) if the statement relates to an increase or  
6 decrease in the number of shares of a class or series, a copy of the  
7 resolution setting and determining the new number of shares of each  
8 class or series in which the number of shares is increased or  
9 decreased;

10 (4) if the statement relates to the deletion of a class  
11 or series of shares and all references to the class or series from  
12 the certificate of formation, a copy of the resolution deleting the  
13 class or series and all references to the class or series from the  
14 certificate of formation;

15 (5) the date of adoption of the resolution; and

16 (6) a statement that the resolution was adopted by all  
17 necessary action on the part of the investment company.

18 (b) After the statement described by Subsection (a) is  
19 filed, a resolution adopted under Section 21.652 becomes an  
20 amendment of the certificate of formation. An amendment of the  
21 certificate of formation described under this section is not  
22 subject to the procedure to amend the certificate of formation  
23 contained in Subchapter B. (TBCA 2.12.C(2), (4).)

24 Sec. 21.654. TERM OF OFFICE OF DIRECTORS. Unless removed in  
25 accordance with the certificate of formation or bylaws of the  
26 investment company, a director of an investment company shall serve  
27 as director for the term for which the director is elected and holds



1 office until a successor is elected and qualifies. (TBCA 2.32.D.)

2 Sec. 21.655. MEETINGS OF SHAREHOLDERS. (a) If provided by  
3 the certificate of formation or bylaws of an investment company,  
4 the investment company is not required to hold an annual meeting of  
5 shareholders or elect directors in a year in which an election of  
6 directors is not required under the Investment Company Act.

7 (b) If an investment company is required to hold a meeting  
8 of shareholders to elect directors under the Investment Company  
9 Act, the meeting shall be designated as the annual meeting of  
10 shareholders for that year. (TBCA 2.24.D.)

11 [Sections 21.656-21.700 reserved for expansion]

12 SUBCHAPTER O. CLOSE CORPORATION

13 Sec. 21.701. DEFINITIONS. In this subchapter:

14 (1) "Close corporation" means a domestic corporation  
15 formed under this subchapter.

16 (2) "Close corporation provision" means a provision in  
17 the certificate of formation of a close corporation or in a  
18 shareholders' agreement of a close corporation.

19 (3) "Ordinary corporation" means a domestic  
20 corporation that is not a close corporation.

21 (4) "Shareholders' agreement" means a written  
22 agreement regulating an aspect of the business and affairs of or the  
23 relationship among the shareholders of a close corporation that has  
24 been executed under this subchapter. (TBCA 12.02.A.)

25 Sec. 21.702. APPLICABILITY OF SUBCHAPTER. (a) This  
26 subchapter applies only to a close corporation.

27 (b) This chapter applies to a close corporation to the

1 extent not inconsistent with this subchapter. (TBCA 12.03.)

2       Sec. 21.703. FORMATION OF CLOSE CORPORATION. A close  
3 corporation shall be formed in accordance with Chapter 3. (TBCA  
4 12.12.)

5       Sec. 21.704. BYLAWS OF CLOSE CORPORATION. (a) A close  
6 corporation does not need to adopt bylaws if provisions required by  
7 law to be contained in the bylaws are contained in the certificate  
8 of formation or a shareholders' agreement.

9       (b) A close corporation that does not have bylaws when it  
10 terminates its status as a close corporation under Section 21.708  
11 shall immediately adopt bylaws that comply with Section 21.057.  
12 (TBCA 12.15.)

13       Sec. 21.705. ADOPTION OF AMENDMENT FOR CLOSE CORPORATION  
14 STATUS. (a) An ordinary corporation may become a close corporation  
15 by amending its certificate of formation in accordance with Chapter  
16 3 to conform with Section 3.008.

17       (b) An amendment adopting close corporation status must be  
18 approved by the affirmative vote of the holders of all of the  
19 outstanding shares of each class established by the close  
20 corporation, regardless of whether a class is entitled to vote on  
21 the amendment by the certificate of formation of the ordinary  
22 corporation. (TBCA 12.13.A.)

23       Sec. 21.706. ADOPTION OF CLOSE CORPORATION STATUS THROUGH  
24 MERGER, EXCHANGE, OR CONVERSION. (a) A surviving or new  
25 corporation resulting from a merger or conversion or a corporation  
26 that acquires a corporation under an exchange under Chapter 10 may  
27 become a close corporation if, as part of the plan of merger,

1 exchange, or conversion, the certificate of formation conforms with  
2 Section 3.008.

3 (b) A plan of merger, exchange, or conversion adopting close  
4 corporation status must be approved by the affirmative vote of the  
5 holders of all of the outstanding ownership or membership  
6 interests, and of each class or series of ownership or membership  
7 interests, of each entity or non-code organization that is party to  
8 the merger, exchange, or conversion, regardless of whether a class  
9 or series of ownership or membership interests is entitled to vote  
10 on the plan by the certificate of formation of the corporation.  
11 (TBCA 12.13.B.)

12 Sec. 21.707. EXISTING CLOSE CORPORATION. (a) This section  
13 applies to an existing corporation that elected to become a close  
14 corporation before the effective date of this code and has not  
15 terminated that status.

16 (b) A close corporation existing before the effective date  
17 of this code is considered to be a close corporation under this  
18 code.

19 (c) A provision in the articles of incorporation of a close  
20 corporation authorized under former law is valid and enforceable if  
21 the corporation's status as a close corporation has not been  
22 terminated.

23 (d) An agreement among the shareholders of a close  
24 corporation in conformance with former law and Sections  
25 21.714-21.725 before the effective date of this code is considered  
26 to be a shareholders' agreement.

27 (e) A certificate representing the shares issued or

1 delivered by the close corporation after the effective date of this  
2 code, whether in connection with the original issue of shares or a  
3 transfer of shares, must conform with Section 21.732. (TBCA  
4 12.14.)

5 Sec. 21.708. TERMINATION OF CLOSE CORPORATION STATUS. A  
6 close corporation may terminate its status as a close corporation  
7 by:

8 (1) filing a statement terminating close corporation  
9 status under Section 21.709;

10 (2) amending the close corporation's certificate of  
11 formation under Chapter 3 by deleting from the certificate of  
12 formation the statement that it is a close corporation;

13 (3) engaging in a merger, interest exchange, or  
14 conversion under Chapter 10, unless the plan of merger, exchange,  
15 or conversion provides that the surviving or new corporation will  
16 continue as or become a close corporation and the plan has been  
17 approved by the affirmative vote or consent of the holders of all of  
18 the outstanding shares, and of each class and series of shares, of  
19 the close corporation, regardless of whether a class or series of  
20 shares is entitled to vote on the plan by the certificate of  
21 formation; or

22 (4) instituting a judicial proceeding to enforce a  
23 close corporation provision providing for the termination. (TBCA  
24 12.21.)

25 Sec. 21.709. STATEMENT TERMINATING CLOSE CORPORATION  
26 STATUS; FILING; NOTICE. (a) If a close corporation provision  
27 specifies a time or event requiring the termination of close

1 corporation status, regardless of whether the provision is  
2 identifiable by a person dealing with the close corporation, the  
3 termination of the close corporation status takes effect on the  
4 occurrence of the specified time or event and the filing of a  
5 statement terminating close corporation status under this section.

6 (b) Promptly after the time or occurrence of an event  
7 requiring termination of close corporation status, a statement  
8 terminating close corporation status shall be signed by an officer  
9 on behalf of the close corporation. A copy of the applicable close  
10 corporation provision must be included in or attached to the  
11 statement. The statement and any attachment shall be filed with the  
12 secretary of state in accordance with Chapter 4.

13 (c) The statement terminating close corporation status must  
14 contain:

15 (1) the name of the corporation;

16 (2) a statement that the corporation has terminated  
17 its status as a close corporation in accordance with the included or  
18 attached close corporation provision; and

19 (3) the time or event that caused the termination and,  
20 in the case of an event, the approximate date of the event.

21 (d) After a statement terminating close corporation status  
22 has been filed under this section, the certificate of formation of  
23 the close corporation is considered to be amended to delete from the  
24 certificate the statement that the corporation is a close  
25 corporation, and the corporation's status as a close corporation is  
26 terminated.

27 (e) The corporation shall personally deliver or mail a copy

1 of the statement to each shareholder of the corporation. A copy of  
2 the statement is considered to have been delivered by mail under  
3 this section when the copy is deposited in the United States mail,  
4 with postage prepaid, addressed to the shareholder at the  
5 shareholder's address as it appears on the share transfer records  
6 of the corporation. The failure to deliver the copy of the  
7 statement does not affect the validity of the termination. (TBCA  
8 12.22.A, B, D, E.)

9       Sec. 21.710. EFFECT OF TERMINATION OF CLOSE CORPORATION  
10 STATUS. (a) A close corporation that terminates its status as a  
11 close corporation and becomes an ordinary corporation is subject to  
12 this chapter as if the corporation had not elected close  
13 corporation status under this subchapter.

14       (b) The effect of termination of close corporation status on  
15 a shareholders' agreement is governed by Section 21.724.

16       (c) When the termination of close corporation status takes  
17 effect, if the close corporation's business and affairs have been  
18 managed by an entity other than a board of directors as provided by  
19 Section 21.725, governance by a board of directors is instituted or  
20 reinstated:

21           (1) if provided by a shareholders' agreement, in the  
22 manner stated in the agreement or by the persons named in the  
23 agreement to serve as the interim board of directors; or

24           (2) if each party to a shareholders' agreement agrees  
25 to elect a board of directors at a shareholders' meeting. (TBCA  
26 12.23.A, B, C.)

27       Sec. 21.711. SHAREHOLDERS' MEETING TO ELECT DIRECTORS. A

1 shareholders' meeting required by Section 21.710(c)(2) shall be  
2 promptly called after the termination of close corporation status  
3 takes effect. If a meeting is not called before the 31st day after  
4 the date the termination takes effect, a shareholder may call a  
5 shareholders' meeting on the provision of notice required by  
6 Section 21.353, regardless of whether the shareholder is entitled  
7 to call a shareholders' meeting or vote at the meeting. At the  
8 meeting, the shareholders shall elect the number of directors  
9 specified in the certificate of formation or bylaws of the  
10 corporation or, in the absence of any specification, three  
11 directors. (TBCA 12.23.D.)

12       Sec. 21.712. TERM OF OFFICE OF DIRECTORS. A director  
13 succeeding to the management of the corporation under Section  
14 21.710(c) shall have a term of office as set forth in Section  
15 21.408. Until a board of directors is elected, the shareholders of  
16 the corporation shall act as the corporation's board of directors,  
17 and the business and affairs of the corporation shall be conducted  
18 under Section 21.726. (TBCA 12.23.E.)

19       Sec. 21.713. MANAGEMENT. A close corporation shall be  
20 managed:

21             (1) by a board of directors in the same manner an  
22 ordinary corporation would be managed under this chapter; or

23             (2) in the manner provided by the close corporation's  
24 certificate of formation or by a shareholders' agreement of the  
25 close corporation. (TBCA 12.31.)

26       Sec. 21.714. SHAREHOLDERS' AGREEMENT. (a) The shareholders  
27 of a close corporation may enter into one or more shareholders'

1 agreements.

2 (b) The business and affairs of a close corporation or the  
3 relationships among the shareholders that may be regulated by a  
4 shareholders' agreement include:

5 (1) the management of the business and affairs of the  
6 close corporation by its shareholders, with or without a board of  
7 directors;

8 (2) the management of the business and affairs of the  
9 close corporation wholly or partly by one or more of its  
10 shareholders or other persons;

11 (3) buy-sell, first option, first refusal, or similar  
12 arrangements with respect to the close corporation's shares or  
13 other securities, and restrictions on the transfer of the shares or  
14 other securities, including more restrictions than those permitted  
15 by Section 21.211;

16 (4) the declaration and payment of dividends or other  
17 distributions in amounts authorized by Subchapter G, regardless of  
18 whether the distribution is in proportion to ownership of shares;

19 (5) the manner in which profits or losses shall be  
20 apportioned;

21 (6) restrictions placed on the rights of a transferee  
22 or assignee of shares to participate in the management or  
23 administration of the close corporation's business and affairs  
24 during the term of the shareholders' agreement;

25 (7) the right of one or more shareholders to cause the  
26 winding up and termination of the close corporation at will or on  
27 the occurrence of a specified event or contingency, in which case



1 the winding up and termination of the close corporation shall  
2 proceed as if all of the shareholders of the close corporation had  
3 consented in writing to winding up and termination as provided by  
4 Chapter 11;

5 (8) the exercise or division of voting power either in  
6 general or with regard to specified matters by or among the  
7 shareholders of the close corporation or other persons, including:

8 (A) voting agreements and voting trusts that do  
9 not conform with Section 6.251 or 6.252;

10 (B) requiring the vote or consent of the holders  
11 of a larger or smaller number of shares than is otherwise required  
12 by this chapter or other law, including an action for termination of  
13 close corporation status;

14 (C) granting one or some other specified number  
15 of votes for each shareholder; and

16 (D) permitting an action for which this chapter  
17 requires approval by the vote of the board of directors or the  
18 shareholders of an ordinary corporation, or both, to be taken  
19 without a vote, in the manner provided by the shareholders'  
20 agreement;

21 (9) the terms and conditions of employment of a  
22 shareholder, director, officer, or other employee of the close  
23 corporation, regardless of the length of the period of employment;

24 (10) the individuals who will serve as directors, if  
25 any, and officers of the close corporation;

26 (11) the arbitration or mediation of issues about  
27 which the shareholders may become deadlocked in voting or about

1 which the directors or those empowered to manage the close  
2 corporation may become deadlocked and the shareholders are unable  
3 to break the deadlock;

4 (12) the termination of close corporation status,  
5 including a right of dissent or other rights that may be granted to  
6 shareholders who object to the termination;

7 (13) qualifications of persons who are or are not  
8 entitled to be shareholders of the close corporation;

9 (14) amendments to or termination of the shareholders'  
10 agreement; and

11 (15) any provision required or permitted to be  
12 contained in the bylaws by this chapter. (TBCA 12.32.)

13 Sec. 21.715. EXECUTION OF SHAREHOLDERS' AGREEMENT. A  
14 shareholders' agreement shall be executed:

15 (1) in the case of an existing close corporation, by  
16 each shareholder at the time of execution, regardless of whether  
17 the shareholder has voting power;

18 (2) in the case of an existing ordinary corporation  
19 that will adopt close corporation status under Section 21.705, by  
20 each shareholder at the time of execution, regardless of whether  
21 the shareholder has voting power; or

22 (3) in the case of a close corporation that is being  
23 formed under Section 21.703, by each person who is a subscriber to  
24 the corporation's shares or agrees to become a holder of the  
25 corporation's shares under the shareholders' agreement of the close  
26 corporation. (TBCA 12.33.A.)

27 Sec. 21.716. ADOPTION OF AMENDMENT OF SHAREHOLDERS'

1 AGREEMENT. Unless otherwise provided by a shareholders' agreement,  
2 an amendment to the shareholders' agreement of a close corporation  
3 may be adopted only by the written consent of each person who would  
4 be required to execute the shareholders' agreement if it were being  
5 executed originally at the time of adoption of the amendment,  
6 regardless of whether the person has voting power in the close  
7 corporation. (TBCA 12.33.B.)

8 Sec. 21.717. DELIVERY OF SHAREHOLDERS' AGREEMENT. (a) The  
9 close corporation shall deliver a complete copy of a shareholders'  
10 agreement to:

11 (1) each person who is bound by the shareholders'  
12 agreement;

13 (2) each person who is or will become a shareholder in  
14 the close corporation as provided by Section 21.715 when a  
15 certificate representing shares in the close corporation is  
16 delivered to the person; and

17 (3) each person to whom a certificate representing  
18 shares is issued and who has not received a complete copy of the  
19 agreement.

20 (b) The failure to deliver a complete copy of a  
21 shareholders' agreement as required by this section does not affect  
22 the validity or enforceability of the shareholders' agreement.  
23 (TBCA 12.33.C.)

24 Sec. 21.718. STATEMENT OF OPERATION AS CLOSE CORPORATION.

25 (a) On or after the formation of a close corporation or adoption of  
26 close corporation status, a close corporation that begins to  
27 conduct its business and affairs under a shareholders' agreement

1 that has become effective shall promptly execute and file with the  
2 secretary of state a statement of operation as a close corporation  
3 in accordance with Chapter 4.

4 (b) The statement required by Subsection (a) must:

5 (1) contain the name of the close corporation;

6 (2) state that the close corporation is being operated  
7 and its business and affairs are being conducted under the terms of  
8 a shareholders' agreement under this subchapter; and

9 (3) contain the date the operation of the corporation  
10 began.

11 (c) A statement of operation as a close corporation shall be  
12 executed by an officer on behalf of the corporation.

13 (d) On the filing of the statement of operation as a close  
14 corporation, the fact that the close corporation is being operated  
15 and its business and affairs are being conducted under the terms of  
16 a shareholders' agreement becomes a matter of public record. (TBCA  
17 12.34.A, B, D.)

18 Sec. 21.719. VALIDITY AND ENFORCEABILITY OF SHAREHOLDERS'  
19 AGREEMENT. (a) A shareholders' agreement executed in accordance  
20 with Section 21.715 is valid and enforceable notwithstanding:

21 (1) the elimination of a board of directors;

22 (2) any restriction imposed on the discretion or  
23 powers of the board of directors or other person empowered to manage  
24 the close corporation; and

25 (3) that the effect of the shareholders' agreement is  
26 to treat the business and affairs of the close corporation as if the  
27 close corporation were a partnership or in a manner that would

1 otherwise be appropriate only among partners.

2 (b) A close corporation, a shareholder of the close  
3 corporation, or a party to a shareholders' agreement may initiate a  
4 proceeding to enforce the shareholders' agreement in accordance  
5 with Section 21.756. (TBCA 12.35.)

6 Sec. 21.720. PERSONS BOUND BY SHAREHOLDERS' AGREEMENT. (a)  
7 A shareholders' agreement executed in accordance with Section  
8 21.715 is:

9 (1) considered to be an agreement among all of the  
10 shareholders of the close corporation; and

11 (2) binding on and enforceable against each  
12 shareholder of the close corporation, regardless of whether:

13 (A) a particular shareholder acquired shares in  
14 the close corporation by purchase, gift, bequest, or otherwise; or

15 (B) the shareholder had actual knowledge of the  
16 existence of the shareholders' agreement at the time of acquiring  
17 shares.

18 (b) A transferee or assignee of shares of a close  
19 corporation in which there is a shareholders' agreement is bound by  
20 the agreement for all purposes, regardless of whether the  
21 transferee or assignee executed or was aware of the agreement.

22 (TBCA 12.36.A.)

23 Sec. 21.721. DELIVERY OF COPY OF SHAREHOLDERS' AGREEMENT TO  
24 TRANSFEREE. (a) Before the transfer of shares of a close  
25 corporation in which there is a shareholders' agreement, the  
26 transferor shall deliver a complete copy of the shareholders'  
27 agreement to the transferee.

1 (b) If the transferor fails to deliver a complete copy of  
2 the shareholders' agreement:

3 (1) the validity and enforceability of the  
4 shareholders' agreement against each shareholder of the  
5 corporation, including the transferee, is not affected;

6 (2) the right, title, or interest of the transferee in  
7 the transferred shares is not adversely affected; and

8 (3) the transferee is entitled to obtain on demand  
9 from the transferor or from the close corporation a complete copy of  
10 the shareholders' agreement at the transferor's expense. (TBCA  
11 12.36.B.)

12 Sec. 21.722. EFFECT OF REQUIRED STATEMENT ON SHARE  
13 CERTIFICATE AND DELIVERY OF SHAREHOLDERS' AGREEMENT. If a  
14 certificate representing shares of a close corporation contains the  
15 statement required by Section 21.732, and a complete copy of each  
16 shareholders' agreement has been delivered as required by Section  
17 21.717, each holder, transferee, or other person claiming an  
18 interest in the shares of the close corporation is conclusively  
19 presumed to have knowledge of a close corporation provision in  
20 effect at the time of the transfer. (TBCA 12.36.C.)

21 Sec. 21.723. PARTY NOT BOUND BY SHAREHOLDERS' AGREEMENT ON  
22 CESSATION; LIABILITY. (a) Notwithstanding the person's signature,  
23 a person ceases to be a party to, and bound by, a shareholders'  
24 agreement when the person ceases to be a shareholder of the close  
25 corporation unless:

26 (1) the person's attempted cessation was in violation  
27 of Section 21.721 or the shareholders' agreement; or

1           (2) the shareholders' agreement provides to the  
2 contrary.

3           (b) Cessation as a party to a shareholders' agreement or as  
4 a shareholder does not relieve a person of liability the person may  
5 have incurred for breach of the shareholders' agreement. (TBCA  
6 12.36.D.)

7           Sec. 21.724. TERMINATION OF SHAREHOLDERS' AGREEMENT. (a)  
8 Except as provided by Subsection (b), a shareholders' agreement  
9 terminates when the close corporation terminates its status as a  
10 close corporation.

11           (b) If provided by the shareholders' agreement, all or part  
12 of the agreement is valid and enforceable to the extent permitted  
13 for an ordinary corporation by this chapter or other law. (TBCA  
14 12.36.E.)

15           Sec. 21.725. CONSEQUENCES OF MANAGEMENT BY PERSONS OTHER  
16 THAN BOARD OF DIRECTORS. Sections 21.726-21.729 apply only to a  
17 close corporation the business and affairs of which are managed  
18 wholly or partly by the shareholders of the close corporation or any  
19 other person as provided by a shareholders' agreement rather than  
20 solely by a board of directors. (TBCA 12.37.A.)

21           Sec. 21.726. SHAREHOLDERS CONSIDERED DIRECTORS. (a) When  
22 required by the context of this chapter, the shareholders of a close  
23 corporation described by Section 21.725 are considered to be  
24 directors of the close corporation for purposes of applying a  
25 provision of this chapter, other than a provision relating to the  
26 election and removal of directors.

27           (b) A requirement that an instrument filed with a

1 governmental agency contain a statement that a specified action has  
2 been taken by the board of directors is satisfied by a statement  
3 that:

4 (1) the corporation is a close corporation with no  
5 board of directors; and

6 (2) the action was approved by the shareholders of the  
7 close corporation or the persons empowered to manage the business  
8 and affairs of the close corporation under a shareholders'  
9 agreement. (TBCA 12.37.B.)

10 Sec. 21.727. LIABILITY OF SHAREHOLDERS. The shareholders of  
11 a close corporation described by Section 21.725 are subject to any  
12 liability imposed on a director of a corporation by this chapter or  
13 other law for a managerial act of or omission made by the  
14 shareholders or any other person empowered to manage the business  
15 and affairs of the close corporation under a shareholders'  
16 agreement and relating to the business and affairs of the close  
17 corporation, if the action is required by law to be undertaken by  
18 the board of directors. (TBCA 12.37.C.)

19 Sec. 21.728. MODE AND EFFECT OF TAKING ACTION BY  
20 SHAREHOLDERS AND OTHERS. (a) An action that shall or may be taken  
21 by the board of directors of an ordinary corporation as required or  
22 authorized by this chapter shall or may be taken by action of the  
23 shareholders of a close corporation described by Section 21.725 at  
24 a meeting of the shareholders or, in the manner permitted by a  
25 shareholders' agreement, this subchapter, or this chapter, without  
26 a meeting.

27 (b) Unless otherwise provided by the certificate of



1 formation of the close corporation or a shareholders' agreement of  
2 the close corporation, an action is binding on a close corporation  
3 if the action is taken after:

4 (1) the affirmative vote of the holders of the  
5 majority of all outstanding shares entitled to vote on the action;  
6 or

7 (2) the consent of all of the shareholders of the close  
8 corporation, which may be proven by:

9 (A) the full knowledge of the action by all of the  
10 shareholders and the shareholders' failure to object to the action  
11 in a timely manner;

12 (B) written consent to the action in accordance  
13 with Section 6.201 or this chapter or any other writing executed by  
14 or on behalf of all of the shareholders reasonably evidencing the  
15 consent; or

16 (C) any other means reasonably evidencing the  
17 consent. (TBCA 12.37.D.)

18 Sec. 21.729. LIMITATION OF SHAREHOLDER'S LIABILITY. (a) A  
19 shareholder of a close corporation described by Section 21.725 is  
20 not liable because of a shareholders' vote or shareholder action  
21 without a vote unless the shareholder had the right to vote or  
22 consent to the action.

23 (b) A shareholder of a close corporation, without regard to  
24 the right to vote or consent, may not be held liable for an action  
25 taken by the shareholders or a person empowered to manage the  
26 business and affairs of the close corporation under a shareholders'  
27 agreement if the shareholder dissents from and has not voted for or

1 consented to the action.

2 (c) The dissent of a shareholder may be proven by:

3 (1) an entry in the minutes of the meeting of  
4 shareholders;

5 (2) a written dissent filed with the secretary of the  
6 meeting before the adjournment of the meeting;

7 (3) a written dissent sent by registered mail to the  
8 secretary of the close corporation promptly after the meeting or  
9 after a written consent was obtained from the other shareholders;  
10 or

11 (4) any other means reasonably evidencing the dissent.  
12 (TBCA 12.37.E.)

13 Sec. 21.730. LACK OF FORMALITIES; TREATMENT AS PARTNERSHIP.  
14 The failure of a close corporation under this subchapter to observe  
15 a usual formality or requirement prescribed for an ordinary  
16 corporation by this chapter relating to the exercise of corporate  
17 powers or the management of a corporation's business and affairs  
18 and the performance of a shareholders' agreement that treats the  
19 close corporation as if the corporation were a partnership or in a  
20 manner that otherwise is appropriate only among partners may not:

21 (1) be a factor in determining whether to impose  
22 personal liability on the shareholders for the close corporation's  
23 obligations by disregarding the separate entity of the close  
24 corporation or otherwise;

25 (2) be grounds for invalidating an otherwise valid  
26 shareholders' agreement; or

27 (3) affect the status of the close corporation as a

1 corporation under this chapter or other law. (TBCA 12.37.F.)

2 Sec. 21.731. OTHER AGREEMENTS AMONG SHAREHOLDERS  
3 PERMITTED. Sections 21.713-21.730 do not prohibit or impair any  
4 other agreement between two or more shareholders of an ordinary  
5 corporation permitted by this chapter or other law. (TBCA 12.38.)

6 Sec. 21.732. CLOSE CORPORATION SHARE CERTIFICATES. (a). In  
7 addition to a matter required or authorized by law to be stated on a  
8 certificate representing shares, each certificate representing  
9 shares issued by a close corporation must conspicuously state on  
10 the front or back of the certificate: "These shares are issued by a  
11 close corporation as defined by the Texas Business Organizations  
12 Code. Under Chapter 21 of that code, a shareholders' agreement may  
13 provide for management of a close corporation by the shareholders  
14 or in other ways different from an ordinary corporation. This may  
15 subject the holder of this certificate to certain obligations and  
16 liabilities not otherwise imposed on shareholders of an ordinary  
17 corporation. On a sale or transfer of these shares, the transferor  
18 is required to deliver to the transferee a complete copy of any  
19 shareholders' agreement."

20 (b) Notwithstanding this chapter and Section 3.202, the  
21 status of a corporation as a close corporation is not affected by  
22 the failure of a share certificate to contain the statement  
23 required by Subsection (a). (TBCA 12.39.)

24 [Sections 21.733-21.750 reserved for expansion]

25 SUBCHAPTER P. JUDICIAL PROCEEDINGS RELATING TO  
26 CLOSE CORPORATION

27 Sec. 21.751. DEFINITIONS. In this subchapter:

1           (1) "Court" means a district court in the county in  
2 which the principal office of the close corporation is located.

3           (2) "Custodian" means a person appointed by a court  
4 under Section 21.761.

5           (3) "Provisional director" means a person appointed by  
6 a court under Section 21.758.

7           (4) "Shareholder" means a record or beneficial owner  
8 of shares in a close corporation, including:

9           (A) a person holding a beneficial interest in the  
10 shares under an inter vivos, testamentary, or voting trust; or

11           (B) the personal representative, as defined by  
12 the Texas Probate Code, of a record or beneficial owner. (TBCA  
13 12.51.A.)

14           Sec. 21.752. PROCEEDINGS AUTHORIZED. In addition to any  
15 other judicial proceeding pertaining to an ordinary corporation  
16 provided for by this chapter or other law, a close corporation or  
17 shareholder may institute a proceeding in a district court in the  
18 county in which the principal office of the close corporation is  
19 located to:

20           (1) enforce a close corporation provision;

21           (2) appoint a provisional director; or

22           (3) appoint a custodian. (TBCA 12.51.B.)

23           Sec. 21.753. NOTICE; INTERVENTION. (a) Notice of the  
24 institution of a proceeding shall be given to the close  
25 corporation, if the corporation is not a plaintiff, and to each  
26 shareholder who is not a plaintiff in the manner prescribed by law  
27 and consistent with due process of law as directed by the court.

1           (b) The close corporation or a shareholder of the close  
2 corporation may intervene in the proceeding. (TBCA 12.51.C.)

3           Sec. 21.754. PROCEEDING NONEXCLUSIVE. Except as provided by  
4 Section 21.755, the right of a close corporation or a shareholder to  
5 institute a proceeding under Section 21.752 is in addition to  
6 another right or remedy the plaintiff is entitled to under law.  
7 (TBCA 12.51.D.)

8           Sec. 21.755. UNAVAILABILITY OF JUDICIAL PROCEEDING. (a) A  
9 shareholder may not institute a proceeding before exhausting any  
10 nonjudicial remedy contained in a close corporation provision for  
11 resolution of an issue that is in dispute unless the shareholder  
12 proves that the close corporation, the shareholders as a whole, or  
13 the shareholder will suffer irreparable harm before the nonjudicial  
14 remedy is exhausted.

15           (b) A shareholder may not institute a proceeding to seek  
16 damages or other monetary relief if the shareholder is entitled to  
17 dissent from a proposed action and receive the fair value of the  
18 shareholder's shares under this code or a shareholders' agreement.  
19 (TBCA 12.51.E.)

20           Sec. 21.756. JUDICIAL PROCEEDING TO ENFORCE CLOSE  
21 CORPORATION PROVISION. (a) In a judicial proceeding under this  
22 section, a court shall enforce a close corporation provision  
23 without regard to whether there is an adequate remedy at law.

24           (b) The court may enforce a close corporation provision by  
25 injunction, specific performance, or other relief the court  
26 determines to be fair and equitable under the circumstances,  
27 including:

1           (1) damages instead of or in addition to specific  
2 enforcement;

3           (2) the appointment of a provisional director or  
4 custodian;

5           (3) the appointment of a receiver for specific assets  
6 of the close corporation in accordance with Section 11.403;

7           (4) the appointment of a receiver to rehabilitate the  
8 close corporation in accordance with Section 11.404;

9           (5) subject to Section 21.757, the liquidation of the  
10 assets and business and involuntary termination of the close  
11 corporation and appointment of a receiver to effect the liquidation  
12 in accordance with Section 11.405; and

13           (6) the termination of close corporation status.

14           (c) The court may not order termination of close corporation  
15 status under Subsection (b)(6) unless the court determines that:

16           (1) any other remedy in law or equity, including  
17 appointment of a provisional director, custodian, or other type of  
18 receiver, is inadequate; and

19           (2) the size, the nature of the business, or the number  
20 of shareholders of the close corporation, or their relationship to  
21 one another or other similar factors, make it wholly impractical to  
22 continue close corporation status. (TBCA 12.52.A.)

23           Sec. 21.757. LIQUIDATION; INVOLUNTARY WINDING UP AND  
24 TERMINATION; RECEIVERSHIP. Except as provided by Section 21.756, in  
25 a case in which a shareholder is entitled to wind up and terminate a  
26 close corporation under a shareholders' agreement, a court may not  
27 order liquidation, involuntary termination, or receivership under

1 that section unless the court determines that any other remedy in  
2 law or equity, including appointment of a provisional director,  
3 custodian, or other type of receiver, is inadequate. (TBCA  
4 12.52.B.)

5       Sec. 21.758. APPOINTMENT OF PROVISIONAL DIRECTOR. (a) In a  
6 judicial proceeding under this section, a court shall appoint a  
7 provisional director for a close corporation on presentation of  
8 proof that the directors or the persons empowered to manage the  
9 business and affairs of the close corporation under a shareholders'  
10 agreement are so divided with respect to the management of the  
11 business and affairs of the close corporation that the required  
12 votes or consent to take action on behalf of the close corporation  
13 cannot be obtained, resulting in the business and affairs being  
14 conducted in a manner that is not to the general advantage of the  
15 shareholders.

16       (b) The provisional director must be an impartial person who  
17 is not a shareholder, a party to a shareholders' agreement, a person  
18 empowered to manage the close corporation under a shareholders'  
19 agreement, or a creditor of the close corporation or of a subsidiary  
20 or affiliate of the close corporation. The court shall determine  
21 any further qualifications.

22       (c) A provisional director shall serve until removed by  
23 court order or by a vote of the majority of the directors or the  
24 holders of the majority of the shares with voting power, or by a  
25 vote of a different number, not fewer than the majority, of  
26 shareholders or directors if a close corporation provision requires  
27 the concurrence of a larger or different majority for action by the

1 directors or shareholders. (TBCA 12.53.A, B (part).)

2       Sec. 21.759. RIGHTS AND POWERS OF PROVISIONAL DIRECTOR. A  
3 provisional director has all the rights and powers of an elected  
4 director of the close corporation, or the rights of vote or consent  
5 of a shareholder and other rights and powers of shareholders or  
6 other persons who have been empowered to manage the business and  
7 affairs of the close corporation under a shareholders' agreement  
8 with the voting power provided by court order, including the right  
9 to notice of, and to vote at, meetings of directors or shareholders.  
10 (TBCA 12.53.B (part).)

11       Sec. 21.760. COMPENSATION OF PROVISIONAL DIRECTOR. (a) The  
12 compensation of a provisional director shall be determined by an  
13 agreement between the provisional director and the close  
14 corporation, subject to court approval.

15       (b) The court may set the compensation in the absence of an  
16 agreement or in the event of a disagreement between the provisional  
17 director and the close corporation. (TBCA 12.53.B (part).)

18       Sec. 21.761. APPOINTMENT OF CUSTODIAN. (a) In a judicial  
19 proceeding under this section, a court shall appoint a custodian  
20 for a close corporation on presentation of proof that: .

21             (1) at a meeting held for the election of directors,  
22 the shareholders are so divided that the shareholders have failed  
23 to elect successors to directors whose terms have expired or would  
24 have expired on qualification of a successor;

25             (2) the business of the close corporation is suffering  
26 or is threatened with irreparable injury because the directors, or  
27 the shareholders or the persons empowered to manage the business



1 and affairs of the close corporation under a shareholders'  
2 agreement, are so divided with respect to the management of the  
3 business and affairs of the close corporation that the required  
4 vote or consent to take action on behalf of the close corporation  
5 cannot be obtained and a remedy with respect to the deadlock in a  
6 close corporation provision has failed; or

7 (3) the plaintiff or intervenor has the right to wind  
8 up and terminate the close corporation under a shareholders'  
9 agreement as provided by Section 21.714.

10 (b) To be eligible to serve as a custodian, a person must  
11 comply with all the qualifications required to serve as a receiver  
12 under Section 11.406. (TBCA 12.54.A, B (part).)

13 Sec. 21.762. POWERS AND DUTIES OF CUSTODIAN. A person who  
14 qualifies as a custodian has all of the powers and duties and the  
15 title of a receiver appointed under Sections 11.404-11.406. The  
16 custodian shall continue the business of the close corporation and  
17 may not liquidate the affairs or distribute the assets of the close  
18 corporation, except as provided by court order or Section  
19 21.761(a)(3). (TBCA 12.54.B (part).)

20 Sec. 21.763. TERMINATION OF CUSTODIANSHIP. If the condition  
21 requiring the appointment of a custodian is remedied other than by  
22 liquidation or winding up and termination, the court shall  
23 terminate the custodianship immediately and management of the close  
24 corporation shall be restored to the directors or shareholders of  
25 the close corporation or to the persons empowered to manage the  
26 business and affairs of the close corporation under a shareholders'  
27 agreement. (TBCA 12.54.B (part).)

1 [Sections 21.764-21.800 reserved for expansion]

2 SUBCHAPTER Q. MISCELLANEOUS PROVISIONS

3 Sec. 21.801. SHARES AND OTHER SECURITIES ARE PERSONAL  
4 PROPERTY. Except as otherwise provided by this code, the shares and  
5 other securities of a corporation are personal property. (TBCA  
6 2.22.A (part).)

7 Sec. 21.802. PENALTIES FOR LATE FILING OF CERTAIN  
8 INSTRUMENTS. (a) A person required under Title 1 or this title to  
9 file a change of registered office or agent, a certificate of  
10 voluntary withdrawal, or a certificate of termination for a  
11 corporation commits an offense if the person does not file the  
12 required filing with the secretary of state before the earlier of:

13 (1) the 30th day after the date of the change,  
14 withdrawal, or termination; or

15 (2) the date the filing is otherwise required by law.

16 (b) A person who violates Subsection (a) is liable to the  
17 state for a civil penalty in an amount not to exceed \$2,500 for each  
18 violation. In determining the amount of a penalty under this  
19 subsection, the court shall consider all the circumstances giving  
20 rise to the offense. The attorney general or the prosecuting  
21 attorney in the county in which the violation occurs may bring suit  
22 to recover the civil penalty imposed under this section.

23 (c) The attorney general may bring an action in the name of  
24 the state to restrain or enjoin a person from violating this  
25 section.

26 (d) In an action or proceeding brought against a person who  
27 has not complied with this section, the plaintiff or other party

1 bringing the suit or proceeding may recover, at the court's  
2 discretion, reasonable costs and attorney's fees incurred by  
3 locating and effecting service of process on the person. Any  
4 damages recovered must be in conjunction with a pending action or  
5 proceeding and shall be awarded as costs under the Texas Rules of  
6 Civil Procedure. This section does not create a private  
7 independent cause of action for failure to comply with this  
8 section.

9 (e) A person who is entitled to recover damages under  
10 Subsection (d) may request from the attorney general  
11 nonconfidential information on the other person for the purpose of  
12 effecting service of process. The attorney general shall comply  
13 with a request made under this subsection to the extent  
14 practicable. (TBCA 9.07.B, C, D, E, F.)

## 15 CHAPTER 22. NONPROFIT CORPORATIONS

### 16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 22.001. DEFINITIONS. In this chapter:

18 (1) "Board of directors" means the group of persons  
19 vested with the management of the affairs of the corporation,  
20 regardless of the name used to designate the group.

21 (2) "Bylaws" means the rules adopted to regulate or  
22 manage the corporation, regardless of the name used to designate  
23 the rules.

24 (3) "Corporation" or "domestic corporation" means a  
25 domestic nonprofit corporation subject to this chapter.

26 (4) "Foreign corporation" means a foreign nonprofit  
27 corporation.

1           (5) "Nonprofit corporation" means a corporation no  
2 part of the income of which is distributable to a member, director,  
3 or officer of the corporation.

4           (6) "Ordinary care" means the care that an ordinarily  
5 prudent person in a similar position would exercise under similar  
6 circumstances. (TNPCA 1.02.A(1), (2), (3), (5), (7), (15).)

7           Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.

8 Subject to the provisions of this code and the certificate of  
9 formation and bylaws of a corporation, a meeting of the members of a  
10 corporation, the board of directors of a corporation, or any  
11 committee designated by the board of directors of a corporation may  
12 be held by means of a remote electronic communications system,  
13 including videoconferencing technology or the Internet, only if:

14           (1) each person entitled to participate in the meeting  
15 consents to the meeting being held by means of that system; and

16           (2) the system provides access to the meeting in a  
17 manner or using a method by which each person participating in the  
18 meeting can communicate concurrently with each other participant.  
19 (TNPCA 9.11.A.)

20           [Sections 22.003-22.050 reserved for expansion]

21           SUBCHAPTER B. PURPOSES AND POWERS

22           Sec. 22.051. GENERAL PURPOSES. A nonprofit corporation may  
23 be formed for any lawful purpose or purposes not expressly  
24 prohibited under this chapter or Chapter 2, including any purpose  
25 described by Section 2.002. (TNPCA 2.01.A (part).)

26           Sec. 22.052. DENTAL HEALTH SERVICE CORPORATION. (a) A  
27 charitable corporation may be formed to operate a dental health

1 service corporation that manages and coordinates the relationship  
2 between a dentist who contracts to perform dental services and a  
3 patient who will receive the services as a member of a group that  
4 contracted with the dental health service corporation to provide  
5 dental care to group members.

6 (b) The certificate of formation for a charitable  
7 corporation formed under this section must have attached as an  
8 exhibit:

9 (1) an affidavit of the organizer or organizers  
10 stating:

11 (A) that not less than 30 percent of the dentists  
12 legally engaged in the practice of dentistry in this state have  
13 signed a contract to perform the required dental services for a  
14 period of at least one year after incorporation; and

15 (B) the names and addresses of those dentists;  
16 and

17 (2) a certification by the State Board of Dental  
18 Examiners that:

19 (A) the applicants are reputable residents of  
20 this state of good moral character; and

21 (B) the corporation will be in the best interest  
22 of the public health.

23 (c) A corporation formed under this section must have at  
24 least 12 directors, including 9 directors who are licensed to  
25 practice dentistry in this state and are actively engaged in the  
26 practice of dentistry in this state.

27 (d) A corporation formed under this section shall maintain

1 as participating or contracting dentists at least 30 percent of the  
2 number of dentists actually engaged in the practice of dentistry in  
3 this state. The corporation shall file annually in September with  
4 the State Board of Dental Examiners the name and address of each  
5 participating or contracting dentist.

6 (e) A corporation formed under this section may not:

7 (1) prevent a patient from selecting the licensed  
8 dentist of the patient's choice to provide dental services to the  
9 patient;

10 (2) deny a licensed dentist the right to participate  
11 as a contracting dentist to perform the dental services contracted  
12 for by the patient;

13 (3) discriminate among patients or licensed dentists  
14 regarding payment or reimbursement for the cost of performing  
15 dental services; or

16 (4) authorize any person to regulate, interfere with,  
17 or intervene in any manner in the diagnosis or treatment provided by  
18 a licensed dentist to a patient.

19 (f) A corporation formed under this section may require the  
20 attending dentist to provide a narrative oral or written  
21 description of the dental services provided to determine benefits  
22 or provide proof of treatment. The corporation may request but may  
23 not require diagnostic aids used in the course of treatment. (TNPCA  
24 2.01.A (part).)

25 Sec. 22.053. DIVIDENDS PROHIBITED. A dividend may not be  
26 paid to, and no part of the income of a corporation may be  
27 distributed to, the corporation's members, directors, or officers.

1 (TNPCA 2.24 (part).)

2 Sec. 22.054. AUTHORIZED BENEFITS AND DISTRIBUTIONS. A  
3 corporation may:

4 (1) pay compensation in a reasonable amount to the  
5 members, directors, or officers of the corporation for services  
6 provided;

7 (2) confer benefits on the corporation's members in  
8 conformity with the corporation's purposes; and

9 (3) make distributions to the corporation's members on  
10 winding up and termination to the extent authorized by this  
11 chapter. (TNPCA 2.24 (part).)

12 Sec. 22.055. POWER TO ASSIST EMPLOYEE OR OFFICER. (a) A  
13 corporation may lend money to or otherwise assist an employee or  
14 officer of the corporation, but not a director, if the loan or  
15 assistance may reasonably be expected to directly or indirectly  
16 benefit the corporation.

17 (b) A loan made to an officer must be:

18 (1) made for the purpose of financing the officer's  
19 principal residence; or

20 (2) set in an original principal amount that does not  
21 exceed:

22 (A) 100 percent of the officer's annual salary,  
23 if the loan is made before the first anniversary of the officer's  
24 employment; or

25 (B) 50 percent of the officer's annual salary, if  
26 the loan is made in any subsequent year. (TNPCA 2.02.A (part).)

27 Sec. 22.056. HEALTH ORGANIZATION CORPORATION. (a) Doctors

1 of medicine and osteopathy licensed by the Texas State Board of  
2 Medical Examiners and podiatrists licensed by the Texas State Board  
3 of Podiatric Medical Examiners may form a corporation that is  
4 jointly owned, managed, and controlled by those practitioners to  
5 perform a professional service that falls within the scope of  
6 practice of those practitioners and consists of:

7 (1) carrying out research in the public interest in  
8 medical science, medical economics, public health, sociology, or a  
9 related field;

10 (2) supporting medical education in medical schools  
11 through grants or scholarships;

12 (3) developing the capabilities of individuals or  
13 institutions studying, teaching, or practicing medicine, including  
14 podiatric medicine;

15 (4) delivering health care to the public; or

16 (5) instructing the public regarding medical science,  
17 public health, hygiene, or a related matter.

18 (b) When doctors of medicine, osteopathy, and podiatry form  
19 a corporation that is jointly owned by those practitioners, the  
20 authority of each of the practitioners is limited by the scope of  
21 practice of the respective practitioners and none can exercise  
22 control over the other's clinical authority granted by their  
23 respective licenses, either through agreements, the certificate of  
24 formation or bylaws of the corporation, directives, financial  
25 incentives, or other arrangements that would assert control over  
26 treatment decisions made by the practitioner. The Texas State  
27 Board of Medical Examiners and the Texas State Board of Podiatric



1 Medical Examiners continue to exercise regulatory authority over  
2 their respective licenses. (TNPCA 2.01.C, D.)

3 [Sections 22.057-22.100 reserved for expansion]

4 SUBCHAPTER C. FORMATION AND GOVERNING DOCUMENTS

5 Sec. 22.101. INCORPORATION OF CERTAIN ORGANIZATIONS. A  
6 religious society, a charitable, benevolent, literary, or social  
7 association, or a church may incorporate as a corporation governed  
8 by this chapter with the consent of a majority of its members. Those  
9 members shall authorize the organizers to execute the certificate  
10 of formation. (TNPCA 3.01.B.)

11 Sec. 22.102. BYLAWS. (a) The initial bylaws of a  
12 corporation shall be adopted by the corporation's board of  
13 directors or, if the management of the corporation is vested in the  
14 corporation's members, by the members.

15 (b) The bylaws may contain provisions for the regulation and  
16 management of the affairs of the corporation that are consistent  
17 with law and the certificate of formation.

18 (c) The board of directors may amend or repeal the bylaws,  
19 or adopt new bylaws, unless:

20 (1) this chapter or the corporation's certificate of  
21 formation wholly or partly reserves the power exclusively to the  
22 corporation's members;

23 (2) the management of the corporation is vested in the  
24 corporation's members; or

25 (3) in amending, repealing, or adopting a bylaw, the  
26 members expressly provide that the board of directors may not amend  
27 or repeal the bylaw. (TNPCA.2.09.)

1           Sec. 22.103. INCONSISTENCY BETWEEN CERTIFICATE OF  
2 FORMATION AND BYLAW. (a) A provision of a certificate of formation  
3 of a corporation that is inconsistent with a bylaw controls over the  
4 bylaw, except as provided by Subsection (b).

5           (b) A change in the number of directors by amendment to the  
6 bylaws controls over the number stated in the certificate of  
7 formation, unless the certificate of formation provides that a  
8 change in the number of directors may be made only by amendment to  
9 the certificate. (TNPCA 3.02.D.)

10          Sec. 22.104. ORGANIZATION MEETING. (a) After the  
11 certificate of formation is filed, the board of directors named in  
12 the certificate of formation of a corporation shall hold an  
13 organization meeting of the board, either in or out of this state,  
14 at the call of the incorporators or a majority of the directors to  
15 adopt bylaws and elect officers and for other purposes determined  
16 by the board at the meeting. The incorporators or directors calling  
17 the meeting shall send notice of the time and place of the meeting  
18 to each director named in the certificate of formation not later  
19 than the third day before the date of the meeting.

20          (b) A first meeting of the members may be held at the call of  
21 the majority of the directors on notice provided not later than the  
22 third day before the date of the meeting. The notice must state the  
23 purposes of the meeting.

24          (c) If the management of a corporation is vested in the  
25 corporation's members, the members shall hold the organization  
26 meeting on the call of an incorporator. An incorporator who calls  
27 the meeting shall:

1           (1) send notice of the time and place of the meeting to  
2 each member not later than the third day before the date of the  
3 meeting;

4           (2) if the corporation is a church, make an oral  
5 announcement of the time and place of the meeting at a regularly  
6 scheduled worship service before the meeting; or

7           (3) send notice of the meeting in the manner provided  
8 by the certificate of formation. (TNPCA 3.05.)

9           Sec. 22.105. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE  
10 OF FORMATION BY MEMBERS HAVING VOTING RIGHTS. (a) Except as  
11 provided by Section 22.107(b), to amend the certificate of  
12 formation of a corporation with members having voting rights, the  
13 board of directors of the corporation must adopt a resolution  
14 specifying the proposed amendment and directing that the amendment  
15 be submitted to a vote at an annual or special meeting of the  
16 members having voting rights.

17           (b) Written notice containing the proposed amendment or a  
18 summary of the changes to be effected by the amendment shall be  
19 given to each member entitled to vote at the meeting within the time  
20 and in the manner provided by this chapter for giving notice of a  
21 meeting of members.

22           (c) The proposed amendment shall be adopted on receiving the  
23 vote required by Section 22.164. (TNPCA 4.02.A(1) (part).)

24           Sec. 22.106. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE  
25 OF FORMATION BY MANAGING MEMBERS. (a) To be approved, a proposed  
26 amendment to the certificate of formation of a corporation the  
27 management of the affairs of which is vested in the corporation's

1 members under Section 22.202 must be submitted to a vote at an  
2 annual, regular, or special meeting of the members.

3 (b) Except as otherwise provided by the certificate of  
4 formation or bylaws, notice containing the proposed amendment or a  
5 summary of the changes to be effected by the amendment shall be  
6 given to the members within the time and in the manner provided by  
7 this chapter for giving notice of a meeting of members.

8 (c) The proposed amendment shall be adopted on receiving the  
9 vote required by Section 22.164. (TNPCA 4.02.A(3) (part).)

10 Sec. 22.107. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE  
11 OF FORMATION BY BOARD OF DIRECTORS. (a) If a corporation has no  
12 members or has no members with voting rights, or in the case of an  
13 amendment under Subsection (b), an amendment to the corporation's  
14 certificate of formation shall be adopted at a meeting of the board  
15 of directors on receiving the vote of directors required by Section  
16 22.164.

17 (b) Except as otherwise provided by the certificate of  
18 formation, the board of directors of a corporation with members  
19 having voting rights may, without member approval, adopt amendments  
20 to the certificate of formation to:

21 (1) extend the duration of the corporation if the  
22 corporation was incorporated when limited duration was required by  
23 law;

24 (2) delete the names and addresses of the initial  
25 directors;

26 (3) delete the name and address of the initial  
27 registered agent or registered office, if a statement of change is

1 on file with the secretary of state; or

2 (4) change the corporate name by:

3 (A) substituting the word "corporation,"  
4 "incorporated," "company," or "limited," or the abbreviation  
5 "corp.," "inc.," "co.," or "ltd.," for a similar word or  
6 abbreviation in the name; or

7 (B) adding, deleting, or changing a geographical  
8 attribution to the name. (TNPCA 4.02.A(2), (4).)

9 Sec. 22.108. NUMBER OF AMENDMENTS SUBJECT TO VOTE AT  
10 MEETING. Any number of amendments to the corporation's certificate  
11 of formation may be submitted to and voted on by a corporation's  
12 members at any one meeting of the members. (TNPCA 4.02.B.)

13 [Sections 22.109-22.150 reserved for expansion]

14 SUBCHAPTER D. MEMBERS

15 Sec. 22.151. MEMBERS. (a) A corporation may have one or  
16 more classes of members or may have no members.

17 (b) If the corporation has one or more classes of members,  
18 the corporation's certificate of formation or bylaws must include:

19 (1) a designation of each class;

20 (2) the manner of the election or appointment of the  
21 members of each class; and

22 (3) the qualifications and rights of the members of  
23 each class.

24 (c) A corporation may issue a certificate, card, or other  
25 instrument evidencing membership rights, voting rights, or  
26 ownership rights as authorized by the certificate of formation or  
27 bylaws. (TNPCA 2.08.A, B, D.)

1           Sec. 22.152. IMMUNITY FROM LIABILITY. The members of a  
2 corporation are not personally liable for a debt, liability, or  
3 obligation of the corporation. (TNPCA 2.08.E.)

4           Sec. 22.153. ANNUAL MEETING. (a) Except as provided by  
5 Subsection (b), a corporation shall hold an annual meeting of the  
6 members at a time that is stated in or determined in accordance with  
7 the corporation's bylaws.

8           (b) If the bylaws provide for more than one regular meeting  
9 of members each year, an annual meeting is not required. If an  
10 annual meeting is not required, directors may be elected at a  
11 meeting as provided by the bylaws. (TNPCA 2.10.A(2) (part).)

12           Sec. 22.154. FAILURE TO CALL ANNUAL MEETING. (a) If the  
13 board of directors of a corporation fails to call the annual meeting  
14 of members at the designated time, a member of the corporation may  
15 demand that the meeting be held within a reasonable time. The  
16 demand must be made in writing and sent to an officer of the  
17 corporation by registered mail.

18           (b) If the annual meeting is not called before the 61st day  
19 after the date of demand, a member of the corporation may compel the  
20 holding of the meeting by legal action directed against the board of  
21 directors, and each of the extraordinary writs of common law and of  
22 courts of equity are available to the member to compel the holding  
23 of the meeting. Each member has a justiciable interest sufficient  
24 to enable the member to institute and prosecute the legal  
25 proceedings.

26           (c) Failure to hold the annual meeting at the designated  
27 time does not result in the winding up and termination of the

1 corporation. (TNPCA 2.10.A(2) (part).)

2 Sec. 22.155. SPECIAL MEETINGS OF MEMBERS. A special meeting  
3 of the members of a corporation may be called by:

4 (1) the president;

5 (2) the board of directors;

6 (3) members having not less than one-tenth of the  
7 votes entitled to be cast at the meeting; or

8 (4) other officers or persons as provided by the  
9 certificate of formation or bylaws of the corporation. (TNPCA  
10 2.10.A(3).)

11 Sec. 22.156. NOTICE OF MEETING. (a) A corporation other  
12 than a church shall provide written notice of the place, date, and  
13 time of a meeting of the members of the corporation and, if the  
14 meeting is a special meeting, the purpose or purposes for which the  
15 meeting is called. The notice shall be delivered to each member  
16 entitled to vote at the meeting not later than the 10th day and not  
17 earlier than the 60th day before the date of the meeting. Notice  
18 may be delivered personally or in accordance with Section 6.051(b).

19 (b) Notice of a meeting of the members of a corporation that  
20 is a church is sufficient if given by oral announcement at a  
21 regularly scheduled worship service before the meeting or as  
22 otherwise provided by the certificate of formation or bylaws of the  
23 corporation. (TNPCA 2.11.A (part), B.)

24 Sec. 22.157. SPECIAL BYLAWS AFFECTING NOTICE. (a) A  
25 corporation may provide in the corporation's bylaws that notice of  
26 an annual or regular meeting is not required.

27 (b) A corporation having more than 1,000 members at the time

1 a meeting is scheduled or called may provide notice of a meeting by  
2 publication in a newspaper of general circulation in the community  
3 in which the principal office of the corporation is located, if the  
4 corporation provides for that notice in its bylaws. (TNPCA 2.11.C,  
5 D.)

6 Sec. 22.158. PREPARATION AND INSPECTION OF LIST OF VOTING  
7 MEMBERS. (a) After setting a record date for the notice of a  
8 meeting, a corporation shall prepare an alphabetical list of the  
9 names of all its voting members. The list must identify:

10 (1) the members who are entitled to notice and the  
11 members who are not entitled to notice of the meeting;

12 (2) the address of each voting member; and

13 (3) the number of votes each voting member is entitled  
14 to cast at the meeting.

15 (b) Not later than the second business day after the date  
16 notice is given of a meeting for which a list was prepared in  
17 accordance with Subsection (a), and continuing through the meeting,  
18 the list of voting members must be available at the corporation's  
19 principal office or at a reasonable place in the municipality in  
20 which the meeting will be held, as identified in the notice of the  
21 meeting, for inspection by members entitled to vote at the meeting  
22 for the purpose of communication with other members concerning the  
23 meeting.

24 (c) A voting member or voting member's agent or attorney is  
25 entitled on written demand to inspect and, at the member's expense  
26 and subject to Section 22.351, copy the list at a reasonable time  
27 during the period the list is available for inspection.



1           (d) The corporation shall make the list of voting members  
2 available at the meeting. A voting member or voting member's agent  
3 or attorney is entitled to inspect the list at any time during the  
4 meeting or an adjournment of the meeting. (TNPCA 2.11B.)

5           Sec. 22.159. QUORUM OF MEMBERS. (a) Unless otherwise  
6 provided by the certificate of formation or bylaws of a  
7 corporation, members of the corporation holding one-tenth of the  
8 votes entitled to be cast, in person or by proxy, constitute a  
9 quorum.

10           (b) The vote of the majority of the votes entitled to be cast  
11 by the members present or represented by proxy at a meeting at which  
12 a quorum is present is the act of the members meeting, unless the  
13 vote of a greater number is required by law or the certificate of  
14 formation or bylaws.

15           (c) Unless otherwise provided by the certificate of  
16 formation or bylaws, a church incorporated before May 12, 1959, is  
17 considered to have provided in the certificate of formation or  
18 bylaws that members present at a meeting for which notice has been  
19 given constitute a quorum. (TNPCA 2.12.)

20           Sec. 22.160. VOTING OF MEMBERS. (a) Each member of a  
21 corporation, regardless of class, is entitled to one vote on each  
22 matter submitted to a vote of the corporation's members, except to  
23 the extent that the voting rights of members of a class are limited,  
24 enlarged, or denied by the certificate of formation or bylaws of the  
25 corporation.

26           (b) A member may vote in person or, unless otherwise  
27 provided by the certificate of formation or bylaws, by proxy

1 executed in writing by the member or the member's attorney-in-fact.

2 (c) Unless otherwise provided by the proxy, a proxy is  
3 revocable and expires 11 months after the date of its execution. A  
4 proxy may not be irrevocable for longer than 11 months.

5 (d) If authorized by the certificate of formation or bylaws  
6 of the corporation, a member vote on any matter may be conducted by  
7 mail, by facsimile transmission, by electronic message, or by any  
8 combination of those methods. (TNPCA 2.13.A, B.)

9 Sec. 22.161. ELECTION OF DIRECTORS. (a) A member entitled  
10 to vote at an election of directors is entitled to vote, in person  
11 or by proxy, for as many persons as there are directors to be  
12 elected and for whose election the member has a right to vote.

13 (b) If expressly authorized by the corporation's  
14 certificate of formation, the member may cumulate the member's vote  
15 by:

16 (1) giving one candidate a number of votes equal to the  
17 number of the directors to be elected multiplied by the member's  
18 vote; or

19 (2) distributing the votes on the same principle among  
20 any number of the candidates.

21 (c) A member who intends to cumulate votes under Subsection  
22 (b) shall give written notice of the member's intention to the  
23 secretary of the corporation not later than the day preceding the  
24 date of the election. (TNPCA 2.13.C.)

25 Sec. 22.162. GREATER VOTING REQUIREMENTS UNDER CERTIFICATE  
26 OF FORMATION. If the corporation's certificate of formation  
27 requires the vote or concurrence of a greater proportion of the

1 members of a corporation than is required by this chapter with  
2 respect to an action to be taken by the members, the certificate of  
3 formation controls. (TNPCA 9.08.)

4 Sec. 22.163. RECORD DATE FOR DETERMINATION OF MEMBERS. (a)  
5 The record date for determining members of a corporation may be set  
6 as provided by Section 6.101.

7 (b) If a record date is not set under Section 6.101:

8 (1) members on the date of the meeting who are  
9 otherwise eligible to vote are entitled to vote at the meeting;

10 (2) members at the close of business on the business  
11 day preceding the date notice is given, or if notice is waived, at  
12 the close of business on the business day preceding the date of the  
13 meeting, are entitled to notice of a meeting of members; and

14 (3) members at the close of business on the later of  
15 the day the board of directors adopts the resolution relating to the  
16 action or the 60th day before the date of the action are entitled to  
17 exercise any rights regarding any other lawful action.

18 (c) The board of directors of a corporation may set a new  
19 date for determining the right to notice of or to vote at any  
20 adjournment of a members' meeting. The board shall set a new date  
21 if the meeting is adjourned to a date more than 90 days after the  
22 record date for determining members entitled to notice of the  
23 original meeting. (TNPCA 2.11A.A (part), B (part), C (part), E.)

24 Sec. 22.164. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.

25 (a) In this section, "fundamental action" means:

26 (1) an amendment of a certificate of formation;

27 (2) a voluntary winding up under Chapter 11;

1           (3) a revocation of a voluntary decision to wind up  
2 under Section 11.151;

3           (4) a cancellation of an event requiring winding up  
4 under Section 11.152;

5           (5) a reinstatement under Section 11.202;

6           (6) a distribution plan under Section 22.305;

7           (7) a plan of merger under Subchapter F;

8           (8) a sale of all or substantially all of the assets of  
9 a corporation under Subchapter F;

10          (9) a plan of conversion under Subchapter F; or

11          (10) a plan of exchange under Subchapter F.

12          (b) Except as otherwise provided by Subsection (c) or the  
13 certificate of formation in accordance with Section 22.162, the  
14 vote required for approval of a fundamental action is:

15           (1) at least two-thirds of the votes that members  
16 present in person or by proxy are entitled to cast at the meeting at  
17 which the action is submitted for a vote, if the corporation has  
18 members with voting rights;

19           (2) at least two-thirds of the votes of members  
20 present at the meeting at which the action is submitted for a vote,  
21 if the management of the affairs of the corporation is vested in the  
22 corporation's members under Section 22.202; or

23           (3) the affirmative vote of the majority of the  
24 directors in office, if the corporation has no members or has no  
25 members with voting rights.

26          (c) If any class of members is entitled to vote on the  
27 fundamental action as a class by the terms of the certificate of

1 formation or the bylaws, the vote required for the approval of the  
2 fundamental action is the vote required by Subsection (b)(1) and at  
3 least two-thirds of the votes that the members of each class in  
4 person or by proxy are entitled to cast at the meeting at which the  
5 action is submitted for a vote. (TNPCA 4.02.A (part), 5.03.A  
6 (part), 5.09 (part), 6.01.A (part), 6.03 (part), 6.04.A (part).)

7 [Sections 22.165-22.200 reserved for expansion]

8 SUBCHAPTER E. MANAGEMENT

9 Sec. 22.201. MANAGEMENT BY BOARD OF DIRECTORS. Except as  
10 provided by Section 22.202, the affairs of a corporation are  
11 managed by a board of directors. The board of directors may be  
12 designated by any name appropriate to the customs, usages, or  
13 tenets of the corporation. (TNPCA 2.14.A (part), D.)

14 Sec. 22.202. MANAGEMENT BY MEMBERS. (a) The certificate of  
15 formation of a corporation may vest the management of the affairs of  
16 the corporation in the members of the corporation. If the  
17 corporation has a board of directors, the corporation may limit the  
18 authority of the board to the extent provided by the certificate of  
19 formation or bylaws.

20 (b) A corporation is considered to have vested the  
21 management of the corporation's affairs in the board of directors  
22 of the corporation in the absence of a provision to the contrary in  
23 the certificate of formation, unless the corporation is a church  
24 organized and operating under a congregational system that:

25 (1) was incorporated before January 1, 1994; and

26 (2) has the management of its affairs vested in the  
27 corporation's members. (TNPCA 2.14.C.)

1           Sec. 22.203. BOARD MEMBER ELIGIBILITY REQUIREMENTS. A  
2 director of a corporation is not required to be a resident of this  
3 state or a member of the corporation unless the certificate of  
4 formation or a bylaw of the corporation imposes that requirement.  
5 The certificate of formation or bylaws may prescribe other  
6 qualifications for directors. (TNPCA 2.14.A (part).)

7           Sec. 22.204. NUMBER OF DIRECTORS. (a) If the corporation  
8 has a board of directors, a corporation may not have fewer than  
9 three directors. The number of directors shall be set by, or in the  
10 manner provided by, the certificate of formation or bylaws of the  
11 corporation, except that the number of directors on the initial  
12 board of directors must be set by the certificate of formation.

13           (b) The number of directors may be increased or decreased by  
14 amendment to, or in the manner provided by, the certificate of  
15 formation or bylaws. A decrease in the number of directors may not  
16 shorten the term of an incumbent director.

17           (c) In the absence of a provision of the certificate of  
18 formation or a bylaw setting the number of directors or providing  
19 for the manner in which the number of directors shall be determined,  
20 the number of directors is the same as the number constituting the  
21 initial board of directors. (TNPCA 2.15.A.)

22           Sec. 22.205. DESIGNATION OF INITIAL BOARD OF DIRECTORS. If  
23 the corporation is to be managed by a board of directors, the  
24 certificate of formation of a corporation must state the names of  
25 the members of the initial board of directors of the corporation.  
26 (TNPCA 2.15.B (part).)

27           Sec. 22.206. ELECTION OR APPOINTMENT OF BOARD OF DIRECTORS.

1 Directors other than the initial directors are elected, appointed,  
2 or designated in the manner provided by the certificate of  
3 formation or bylaws. If the method of election, designation, or  
4 appointment is not provided by the certificate of formation or  
5 bylaws, directors other than the initial directors are elected by  
6 the board of directors. (TNPCA 2.15.B (part).)

7 Sec. 22.207. ELECTION AND CONTROL BY CERTAIN ENTITIES. (a)

8 The board of directors of a religious, charitable, educational, or  
9 eleemosynary corporation may be affiliated with, elected, and  
10 controlled by an incorporated or unincorporated convention,  
11 conference, or association organized under the laws of this or  
12 another state, the membership of which is composed of  
13 representatives, delegates, or messengers from a church or other  
14 religious association.

15 (b) The board of directors of a corporation may be wholly or  
16 partly elected by one or more associations or corporations  
17 organized under the laws of this or another state if:

18 (1) the certificate of formation or bylaws of the  
19 corporation provide for that election; and

20 (2) the corporation has no members with voting rights.  
21 (TNPCA 2.14.B, E.)

22 Sec. 22.208. TERM OF OFFICE. (a) A director on the initial  
23 board of directors of a corporation holds office until the first  
24 annual election of directors or for the period specified in the  
25 certificate of formation or bylaws of the corporation. Directors  
26 other than the initial directors are elected, appointed, or  
27 designated for the terms provided by the certificate of formation

1 or bylaws.

2 (b) In the absence of a provision in the certificate of  
3 formation or bylaws setting the term of office for directors, a  
4 director holds office until the next annual election of directors  
5 and until a successor is elected, appointed, or designated and  
6 qualified.

7 (c) A director may be removed from office as provided in  
8 Section 22.211. (TNPCA 2.15.B (part), C (part).)

9 Sec. 22.209. CLASSIFICATION OF DIRECTORS. Directors may be  
10 divided into classes. The terms of office of the several classes  
11 are not required to be uniform. (TNPCA 2.15.C (part).)

12 Sec. 22.210. EX OFFICIO MEMBER OF BOARD. (a) The  
13 certificate of formation or bylaws of a corporation may provide  
14 that a person may be an ex officio member of the board of directors  
15 of the corporation.

16 (b) A person designated as an ex officio member of the board  
17 is entitled to receive notice of and to attend board meetings.

18 (c) An ex officio member is not entitled to vote unless the  
19 certificate of formation or bylaws authorize the member to vote. An  
20 ex officio member of the board who is not entitled to vote does not  
21 have the duties or liabilities of a director provided by this  
22 chapter. (TNPCA 2.14.F.)

23 Sec. 22.211. REMOVAL OF DIRECTOR. (a) A director of a  
24 corporation may be removed from office under any procedure provided  
25 by the certificate of formation or bylaws of the corporation.

26 (b) In the absence of a provision for removal in the  
27 certificate of formation or bylaws, a director may be removed from



1 office, with or without cause, by the persons entitled to elect,  
2 designate, or appoint the director. If the director was elected to  
3 office, removal requires an affirmative vote equal to the vote  
4 necessary to elect the director. (TNPCA 2.15.D.)

5 Sec. 22.212. VACANCY. (a) Unless otherwise provided by the  
6 certificate of formation or bylaws of the corporation, a vacancy in  
7 the board of directors of a corporation shall be filled by the  
8 affirmative vote of the majority of the remaining directors,  
9 regardless of whether that majority is less than a quorum. A  
10 director elected to fill a vacancy is elected for the unexpired term  
11 of the member's predecessor in office.

12 (b) A vacancy in the board occurring because of an increase  
13 in the number of directors shall be filled by election at an annual  
14 meeting or at a special meeting of members called for that purpose.  
15 If a corporation has no members or has no members with the right to  
16 vote on the vacancy, the vacancy shall be filled as provided by the  
17 certificate of formation or bylaws. (TNPCA 2.16.)

18 Sec. 22.213. QUORUM. (a) A quorum for the transaction of  
19 business by the board of directors of a corporation is the lesser  
20 of:

21 (1) the majority of the number of directors set by the  
22 corporation's bylaws or, in the absence of a bylaw setting the  
23 number of directors, a majority of the number of directors stated in  
24 the corporation's certificate of formation; or

25 (2) any number, not less than three, set as a quorum by  
26 the certificate of formation or bylaws.

27 (b) A director present by proxy at a meeting may not be

1 counted toward a quorum. (TNPCA 2.17.A, B.)

2       Sec. 22.214. ACTION BY DIRECTORS. The act of a majority of  
3 the directors present in person or by proxy at a meeting at which a  
4 quorum is present is the act of the board of directors of a  
5 corporation, unless the act of a greater number is required by the  
6 certificate of formation or bylaws of the corporation. (TNPCA  
7 2.17.C.)

8       Sec. 22.215. VOTING IN PERSON OR BY PROXY. A director of a  
9 corporation may vote in person or, if authorized by the certificate  
10 of formation or bylaws of the corporation, by proxy executed in  
11 writing by the director. (TNPCA 2.17.D (part).)

12       Sec. 22.216. TERM AND REVOCABILITY OF PROXY. (a) A proxy  
13 expires three months after the date the proxy is executed.

14       (b) A proxy is revocable unless otherwise provided by the  
15 proxy or made irrevocable by law. (TNPCA 2.17.D (part).)

16       Sec. 22.217. NOTICE OF MEETING; WAIVER OF NOTICE. (a)  
17 Regular meetings of the board of directors of a corporation may be  
18 held with or without notice as prescribed by the corporation's  
19 bylaws.

20       (b) Special meetings of the board of directors shall be held  
21 with notice as prescribed by the bylaws. Attendance of a director  
22 at a meeting constitutes a waiver of notice, unless the director  
23 attends a meeting for the express purpose of objecting to the  
24 transaction of any business on the ground that the meeting is not  
25 lawfully called or convened.

26       (c) Unless required by the bylaws, the business to be  
27 transacted at, or the purpose of, a regular or special meeting of

1 the board of directors is not required to be specified in the notice  
2 or waiver of notice of the meeting.

3 (d) Notice may be delivered personally or in accordance with  
4 Section 6.051(b). (TNPCA 2.19.B.)

5 Sec. 22.218. MANAGEMENT COMMITTEE. (a) If authorized by  
6 the certificate of formation or bylaws of the corporation, the  
7 board of directors of a corporation, by resolution adopted by the  
8 majority of the directors in office, may designate one or more  
9 committees to have and exercise the authority of the board in the  
10 management of the corporation to the extent provided by:

11 (1) the resolution;

12 (2) the certificate of formation; or

13 (3) the bylaws.

14 (b) A committee designated under this section must consist  
15 of at least two persons. The majority of the persons on the  
16 committee must be directors. If provided by the certificate of  
17 formation or bylaws, the remaining persons on the committee are not  
18 required to be directors.

19 (c) The designation of a committee and the delegation of  
20 authority to the committee does not operate to relieve the board of  
21 directors, or an individual director, of any responsibility imposed  
22 on the board or director by law. A committee member who is not a  
23 director has the same responsibility with respect to the committee  
24 as a committee member who is a director. (TNPCA 2.18.A.)

25 Sec. 22.219. OTHER COMMITTEES. (a) The board of directors  
26 of a corporation, by resolution adopted by the majority of the  
27 directors at a meeting at which a quorum is present, or the

1 president, if authorized by a similar resolution of the board of  
2 directors or by the certificate of formation or bylaws of the  
3 corporation, may designate and appoint one or more committees that  
4 do not have the authority of the board of directors in the  
5 management of the corporation.

6 (b) The membership on a committee designated under this  
7 section may be limited to directors. (TNPCA 2.18.B.)

8 Sec. 22.220. ACTION WITHOUT MEETING OF DIRECTORS OR  
9 COMMITTEE. (a) The certificate of formation of a corporation may  
10 provide that an action required by this chapter to be taken at a  
11 meeting of the corporation's directors or an action that may be  
12 taken at a meeting of the directors or a committee may be taken  
13 without a meeting if a written consent, stating the action to be  
14 taken, is signed by the number of directors or committee members  
15 necessary to take that action at a meeting at which all of the  
16 directors or committee members are present and voting. The consent  
17 must state the date of each director's or committee member's  
18 signature.

19 (b) A written consent signed by less than all of the  
20 directors or committee members is not effective to take the action  
21 that is the subject of the consent unless, not later than the 60th  
22 day after the date of the earliest dated consent delivered to the  
23 corporation in the manner required by this section, a consent or  
24 consents signed by the required number of directors or committee  
25 members are delivered to the corporation:

26 (1) at the registered office or principal place of  
27 business of the corporation; or

1           (2) through the corporation's registered agent,  
2 transfer agent, registrar, or exchange agent or an officer or agent  
3 of the corporation having custody of the books in which proceedings  
4 of meetings of directors or committees are recorded.

5           (c) Delivery under Subsection (b) must be by hand or by  
6 certified or registered mail, return receipt requested. Delivery to  
7 the corporation's principal place of business must be addressed to  
8 the president or principal executive officer of the corporation.

9           (d) Prompt notice of the taking of an action by directors or  
10 a committee without a meeting by less than unanimous written  
11 consent shall be given to each director or committee member who did  
12 not consent in writing to the action. (TNPCA 9.10.C(1), (2), (3).)

13           Sec. 22.221. GENERAL STANDARDS FOR DIRECTORS. (a) A  
14 director shall discharge the director's duties, including duties as  
15 a committee member, in good faith, with ordinary care, and in a  
16 manner the director reasonably believes to be in the best interest  
17 of the corporation.

18           (b) A director is not liable to the corporation, a member,  
19 or another person for an action taken or not taken as a director if  
20 the director acted in compliance with this section. A person  
21 seeking to establish liability of a director must prove that the  
22 director did not act:

23                   (1) in good faith;

24                   (2) with ordinary care; and

25                   (3) in a manner the director reasonably believed to be  
26 in the best interest of the corporation. (TNPCA 2.28.A, D.)

27           Sec. 22.222. RELIGIOUS CORPORATION DIRECTOR'S GOOD FAITH

1 RELIANCE ON CERTAIN INFORMATION. A director of a religious  
2 corporation, in the discharge of a duty imposed or power conferred  
3 on the director, including a duty imposed or power conferred as a  
4 committee member, may rely in good faith on information or on an  
5 opinion, report, or statement, including a financial statement or  
6 other financial data, concerning the corporation or another person  
7 that was prepared or presented by:

8 (1) a religious authority; or

9 (2) a minister, priest, rabbi, or other person whose  
10 position or duties in the corporation the director believes justify  
11 reliance and confidence and whom the director believes to be  
12 reliable and competent in the matters presented. (TNPCA 2.28.B  
13 (part).)

14 Sec. 22.223. NOT A TRUSTEE. A director of a corporation is  
15 not considered to have the duties of a trustee of a trust with  
16 respect to the corporation or with respect to property held or  
17 administered by the corporation, including property subject to  
18 restrictions imposed by the donor or transferor of the property.  
19 (TNPCA 2.28.E.)

20 Sec. 22.224. DELEGATION OF INVESTMENT AUTHORITY. (a) The  
21 board of directors of a corporation may:

22 (1) contract with an advisor who is an investment  
23 counsel or a trust company, bank, investment advisor, or investment  
24 manager; and

25 (2) confer on that advisor the authority to:

26 (A) purchase or otherwise acquire a stock, bond,  
27 security, or other investment on behalf of the corporation; and

1 (B) sell, transfer, or otherwise dispose of an  
2 asset or property of the corporation at a time and for a  
3 consideration the advisor considers appropriate.

4 (b) The board of directors may:

5 (1) confer on an advisor described by Subsection (a)  
6 other powers regarding the corporation's investments as the board  
7 considers appropriate; and

8 (2) authorize the advisor to hold title to an asset or  
9 property of the corporation, in the advisor's own name or in the  
10 name of a nominee, for the benefit of the corporation.

11 (c) The board of directors is not liable for an action taken  
12 or not taken by an advisor under this section if the board acted in  
13 good faith and with ordinary care in selecting the advisor. The  
14 board of directors may remove or replace the advisor, with or  
15 without cause, if the board considers that action appropriate or  
16 necessary. (TNPCA 2.29.)

17 Sec. 22.225. LOAN TO DIRECTOR PROHIBITED. (a) A  
18 corporation may not make a loan to a director.

19 (b) The directors of a corporation who vote for or assent to  
20 the making of a loan to a director, and any officer who participates  
21 in making the loan, are jointly and severally liable to the  
22 corporation for the amount of the loan until the loan is repaid.  
23 (TNPCA 2.25.)

24 Sec. 22.226. DIRECTOR LIABILITY FOR CERTAIN DISTRIBUTIONS  
25 OF ASSETS. (a) In addition to any other liability imposed by law on  
26 the directors of a corporation, the directors who vote for or assent  
27 to a distribution of assets other than in payment of the

1 corporation's debts, when the corporation is insolvent or when  
2 distribution would render the corporation insolvent, or during the  
3 liquidation of the corporation, without the payment and discharge  
4 of or making adequate provisions for any known debt, obligation, or  
5 liability of the corporation, are jointly and severally liable to  
6 the corporation for the value of the assets distributed, to the  
7 extent that the debt, obligation, or liability is not paid and  
8 discharged.

9 (b) A director is not liable under this section if, in  
10 voting for or assenting to a distribution, the director:

11 (1) relied in good faith and with ordinary care on  
12 information or an opinion, report, or statement in accordance with  
13 Section 3.102;

14 (2) acting in good faith and with ordinary care,  
15 considered the assets of the corporation to be at least equal to  
16 their book value; or

17 (3) in determining whether the corporation made  
18 adequate provision for the discharge of all of its liabilities and  
19 obligations as provided in Section 11.053, relied in good faith and  
20 with ordinary care on financial statements of, or other information  
21 concerning, a person who was or became contractually obligated to  
22 discharge some or all of those liabilities or obligations. (TNPCA  
23 2.26.A, C.)

24 Sec. 22.227. DISSENT TO ACTION. (a) A director of a  
25 corporation who is present at a meeting of the board of directors at  
26 which action is taken on a corporate matter described by Section  
27 22.226(a) is presumed to have assented to the action unless:



1           (1) the director's dissent has been entered in the  
2 minutes of the meeting;

3           (2) the director has filed a written dissent to the  
4 action with the person acting as the secretary of the meeting before  
5 the meeting is adjourned; or

6           (3) the director has sent a written dissent by  
7 registered mail to the secretary of the corporation immediately  
8 after the meeting has been adjourned.

9           (b) The right to dissent under this section does not apply  
10 to a director who voted in favor of the action. (TNPCA 2.26.B.)

11           Sec. 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY. A  
12 director is not liable under Section 22.226 or 22.227 if, in the  
13 exercise of ordinary care, the director acted in good faith and in  
14 reliance on the written opinion of an attorney for the corporation.  
15 (TNPCA 2.26.D.)

16           Sec. 22.229. RIGHT TO CONTRIBUTION. A director against whom  
17 a claim is asserted under Section 22.226 or 22.227 and who is held  
18 liable on the claim is entitled to contribution from persons who  
19 accepted or received the distribution knowing the distribution to  
20 have been made in violation of that section, in proportion to the  
21 amounts received by those persons. (TNPCA 2.26.E.)

22           Sec. 22.230. CONTRACTS OR TRANSACTIONS INVOLVING  
23 INTERESTED DIRECTORS, OFFICERS, AND MEMBERS. (a) This section  
24 applies only to a contract or transaction between a corporation  
25 and:

26           (1) one or more of the corporation's directors,  
27 officers, or members; or

1           (2) an entity or other organization in which one or  
2 more of the corporation's directors, officers, or members:

3                   (A) is a managerial official or a member; or

4                   (B) has a financial interest.

5           (b) An otherwise valid contract or transaction is valid  
6 notwithstanding that a director, officer, or member of the  
7 corporation is present at or participates in the meeting of the  
8 board of directors, of a committee of the board, or of the members  
9 that authorizes the contract or transaction, or votes to authorize  
10 the contract or transaction, if:

11                   (1) the material facts as to the relationship or  
12 interest and as to the contract or transaction are disclosed to or  
13 known by:

14                           (A) the corporation's board of directors, a  
15 committee of the board of directors, or the members, and the board,  
16 the committee, or the members in good faith and with ordinary care  
17 authorize the contract or transaction by the affirmative vote of  
18 the majority of the disinterested directors, committee members or  
19 members, regardless of whether the disinterested directors,  
20 committee members or members constitute a quorum; or

21                           (B) the members entitled to vote on the  
22 authorization of the contract or transaction, and the contract or  
23 transaction is specifically approved in good faith and with  
24 ordinary care by a vote of the members; or

25                   (2) the contract or transaction is fair to the  
26 corporation when the contract or transaction is authorized,  
27 approved, or ratified by the board of directors, a committee of the

1 board of directors, or the members.

2 (c) Common or interested directors or members of a  
3 corporation may be included in determining the presence of a quorum  
4 at a meeting of the board, a committee of the board, or members that  
5 authorizes the contract or transaction. (TNPCA 2.30.)

6 Sec. 22.231. OFFICERS. (a) The officers of a corporation  
7 shall include a president and a secretary and may include one or  
8 more vice presidents, a treasurer, and other officers and assistant  
9 officers as considered necessary. Any two or more offices, other  
10 than the offices of president and secretary, may be held by the same  
11 person.

12 (b) A properly designated committee may perform the  
13 functions of an officer. A single committee may perform the  
14 functions of any two or more officers, including the functions of  
15 president and secretary.

16 (c) The officers of a corporation may be designated by other  
17 or additional titles as provided by the certificate of formation or  
18 bylaws of the corporation. (TNPCA 2.20.A (part), B.)

19 Sec. 22.232. ELECTION OR APPOINTMENT OF OFFICERS. (a) An  
20 officer of a corporation shall be elected or appointed at the time,  
21 in the manner, and for the terms prescribed by the certificate of  
22 formation or bylaws of the corporation. The term of an officer may  
23 not exceed three years.

24 (b) If the certificate of formation or bylaws do not include  
25 provisions for the election or appointment of officers, the  
26 officers shall be elected or appointed annually by the board of  
27 directors or, if the management of the corporation is vested in the

1 corporation's members, by the members. (TNPCA 2.20.A (part).)

2       Sec. 22.233. APPLICATION TO CHURCH. A corporation that is a  
3 church is not required to have officers as provided by this  
4 subchapter. The duties and responsibilities of the officers may be  
5 vested in the corporation's board of directors or other designated  
6 body in any manner provided for by the certificate of formation or  
7 bylaws of the corporation. (TNPCA 2.20.C.)

8       Sec. 22.234. RELIGIOUS CORPORATION OFFICER'S GOOD FAITH  
9 RELIANCE ON CERTAIN INFORMATION. An officer of a religious  
10 corporation, in the discharge of a duty imposed or power conferred  
11 on the officer, may rely in good faith and with ordinary care on  
12 information or on an opinion, report, or statement concerning the  
13 corporation or another person that was prepared or presented by:

14             (1) a religious authority or another religious  
15 corporation; or

16             (2) a minister, priest, rabbi, or other person whose  
17 position or duties in the religious authority or religious  
18 corporation the officer believes justify reliance and confidence  
19 and whom the officer believes to be reliable and competent in the  
20 matters presented. (TNPCA 2.20.D (part).)

21       Sec. 22.235. OFFICER LIABILITY. (a) An officer is not  
22 liable to the corporation or any other person for an action taken or  
23 omission made by the officer in the person's capacity as an officer  
24 unless the officer's conduct was not exercised:

25             (1) in good faith;

26             (2) with ordinary care; and

27             (3) in a manner the officer reasonably believes to be

1 in the best interest of the corporation.

2 (b) This section shall not affect the liability of the  
3 corporation for an act or omission of the officer. (TNPCA 2.22.)

4 [Sections 22.236-22.250 reserved for expansion]

5 SUBCHAPTER F. FUNDAMENTAL BUSINESS TRANSACTIONS

6 Sec. 22.251. APPROVAL OF MERGER. (a) A domestic  
7 corporation that is a party to a merger under Chapter 10 must  
8 approve the merger by complying with this section.

9 (b) If the corporation that is a party to the merger has no  
10 members or has no members with voting rights, the plan of merger  
11 must be approved by the vote of directors required by Section  
12 22.164.

13 (c) If the management of the affairs of the corporation that  
14 is a party to the merger is vested in its members under Section  
15 22.202, the plan of merger:

16 (1) must be submitted to a vote at an annual, regular,  
17 or special meeting of the members; and

18 (2) must be approved by the members by the vote  
19 required by Section 22.164.

20 (d) If the corporation that is a party to the merger has  
21 members with voting rights:

22 (1) the board of directors must adopt a resolution  
23 that:

24 (A) approves the plan of merger; and

25 (B) directs that the plan be submitted to a vote  
26 at an annual or special meeting of the members having voting rights;  
27 and

1           (2) the members must approve the plan of merger by the  
2 vote required by Section 22.164. (TNPCA 5.03.A(1) (part), (2), (3)  
3 (part).)

4           Sec. 22.252. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF  
5 ASSETS. (a) A corporation must approve the sale of all or  
6 substantially all of its assets by complying with this section.

7           (b) If the corporation has no members or has no members with  
8 voting rights, the sale of all or substantially all of the assets of  
9 the corporation must be authorized by the vote of directors  
10 required by Section 22.164.

11           (c) If the management of the affairs of the corporation is  
12 vested in its members under Section 22.202, a resolution  
13 authorizing a sale of all or substantially all of the assets of the  
14 corporation:

15                 (1) must be submitted to a vote at an annual, regular,  
16 or special meeting of the members; and

17                 (2) must be approved by the members by the vote  
18 required by Section 22.164.

19           (d) If the corporation has members with voting rights:

20                 (1) the board of directors of the corporation must  
21 adopt a resolution that:

22                         (A) recommends the sale; and

23                         (B) directs that the resolution be submitted to a  
24 vote at an annual or special meeting of the members having voting  
25 rights; and

26                 (2) the members must approve the resolution by the  
27 vote required by Section 22.164.

1           (e) At the meeting required by Subsection (c) or (d), in  
2 addition to approving the resolution authorizing the sale, the  
3 members may set, or authorize the board of directors to set, the  
4 terms and conditions of the sale and the consideration to be  
5 received by the corporation for the sale by the same vote of  
6 members.

7           (f) After the members authorize a sale under Subsection (d),  
8 the board of directors may abandon the sale, subject to the rights  
9 of third parties under any contracts relating to the sale, without  
10 further action or approval by members.

11           (g) Notwithstanding Subsection (d), if a corporation is  
12 insolvent, a sale of all or substantially all of the assets of the  
13 corporation may be authorized on receiving the affirmative vote of  
14 the majority of the directors in office.

15           (h) The phrase "sale of all or substantially all of the  
16 assets" means the sale, lease, exchange, or other disposition,  
17 other than a pledge, mortgage, deed of trust, or trust indenture  
18 unless otherwise provided by the certificate of formation, of all  
19 or substantially all of the property and assets of a domestic  
20 corporation that is not made in the usual and regular course of the  
21 corporation's activities without regard to whether the disposition  
22 is made with the goodwill of the corporation's activities. The term  
23 does not include a transaction that results in the corporation  
24 directly or indirectly:

- 25                   (1) continuing to engage in one or more activities; or  
26                   (2) applying a portion of the consideration received  
27 in connection with the transaction to the conduct of an activity

1 that the corporation engages in after the transaction. (TNPCA 5.09  
2 (part).)

3       Sec. 22.253. MEETING OF MEMBERS; NOTICE. (a) The  
4 corporation must give to each member entitled to vote at a meeting  
5 described by Section 22.251(c) or (d) or Section 22.252(c) or (d) a  
6 written notice stating that the purpose or one of the purposes of  
7 the meeting is to consider the plan of merger or the sale of all or  
8 substantially all of the assets of the corporation. The notice must  
9 be given in the time and manner provided by Chapter 6 and this  
10 chapter for giving notice of a meeting to members.

11       (b) A vote of members entitled to vote at the meeting shall  
12 be taken on the plan of merger or the resolution authorizing the  
13 sale of all or substantially all of the assets of the corporation.  
14 The members must approve the plan or resolution by the vote required  
15 by Section 22.164.

16       (c) For a meeting to vote on a plan of merger, the notice of  
17 the meeting must contain the plan of merger or a summary of the plan  
18 of merger.

19       (d) For a corporation the management of the affairs of which  
20 is vested in its members under Section 22.202, the notice of the  
21 meeting is subject to the provisions of the certificate of  
22 formation or bylaws of the corporation. (TNPCA 5.03.A (part), 5.09  
23 (part).)

24       Sec. 22.254. PLEDGE, MORTGAGE, DEED OF TRUST, OR TRUST  
25 INDENTURE. (a) Except as otherwise provided by Subsection (b) or by  
26 the corporation's certificate of formation:

27       (1) the board of directors of a corporation may



1 authorize a pledge, mortgage, deed of trust, or trust indenture;  
2 and

3 (2) an authorization or consent of members is not  
4 required for the validity of the transaction or for any sale under  
5 the terms of the transaction.

6 (b) If the management of the affairs of a corporation is  
7 vested in the corporation's members under Section 22.202:

8 (1) the members may authorize a pledge, mortgage, deed  
9 of trust, or trust indenture in the manner provided by Section  
10 22.252(c) for a sale of all or substantially all of the assets of a  
11 corporation; and

12 (2) an authorization by the board of directors is not  
13 required for the validity of the transaction or for any sale under  
14 the terms of the transaction. (TNPCA 5.09 (part).)

15 Sec. 22.255. CONVEYANCE BY CORPORATION. A corporation may  
16 convey real property of the corporation when authorized by  
17 appropriate resolution of the board of directors or members.  
18 (TNPCA 5.08 (part).)

19 Sec. 22.256. APPROVAL OF CONVERSION. (a) A domestic  
20 corporation must approve a conversion under Chapter 10 by complying  
21 with this section.

22 (b) If the corporation has no members or has no members with  
23 voting rights, the plan of conversion must be approved by the vote  
24 of directors required by Section 22.164.

25 (c) If the management of the affairs of the corporation is  
26 vested in its members under Section 22.202, the plan of conversion:

27 (1) must be submitted to a vote at an annual, regular,

1 or special meeting of the members; and

2 (2) must be approved by the members by the vote  
3 required by Section 22.164.

4 (d) If the corporation has members with voting rights:

5 (1) the board of directors must adopt a resolution  
6 that:

7 (A) approves the plan of conversion; and

8 (B) directs that the plan be submitted to a vote  
9 at an annual or special meeting of the members having voting rights;  
10 and

11 (2) the members must approve the plan of conversion by  
12 the vote required by Section 22.164. (New.)

13 Sec. 22.257. APPROVAL OF EXCHANGE. (a) A domestic  
14 corporation must approve an exchange under Chapter 10 by complying  
15 with this section.

16 (b) If the corporation has no members or has no members with  
17 voting rights, the plan of exchange must be approved by the vote of  
18 directors required by Section 22.164.

19 (c) If the management of the affairs of the corporation is  
20 vested in its members under Section 22.202, the plan of exchange:

21 (1) must be submitted to a vote at an annual, regular,  
22 or special meeting of the members; and

23 (2) must be approved by the members by the vote  
24 required by Section 22.164.

25 (d) If the corporation has members with voting rights:

26 (1) the board of directors must adopt a resolution  
27 that:

1 (A) approves the plan of exchange; and

2 (B) directs that the plan be submitted to a vote  
3 at an annual or special meeting of the members having voting rights;  
4 and

5 (2) the members must approve the plan of exchange by  
6 the vote required by Section 22.164. (New.)

7 [Sections 22.258-22.300 reserved for expansion]

8 SUBCHAPTER G. WINDING UP AND TERMINATION

9 Sec. 22.301. APPROVAL OF VOLUNTARY WINDING UP,  
10 REINSTATEMENT, REVOCATION OF VOLUNTARY WINDING UP, OR DISTRIBUTION  
11 PLAN. A corporation must approve a voluntary winding up in  
12 accordance with Chapter 11, a reinstatement in accordance with  
13 Section 11.202, a cancellation of an event requiring winding up  
14 under Section 11.152, a revocation of a voluntary decision to wind  
15 up in accordance with Section 11.151, or a distribution plan in  
16 accordance with Section 22.305 by complying with the procedures  
17 prescribed by this subchapter. (New.)

18 Sec. 22.302. CERTAIN PROCEDURES FOR APPROVAL. To approve a  
19 voluntary winding up, a reinstatement, a cancellation of an event  
20 requiring winding up, a revocation of a voluntary decision to wind  
21 up, or a distribution plan, a corporation must follow the following  
22 procedures:

23 (1) if the corporation has no members or has no members  
24 with voting rights, the corporation's board of directors must adopt  
25 a resolution to wind up, to reinstate, to cancel the event requiring  
26 winding up, to revoke a voluntary decision to wind up, or to effect  
27 the distribution plan by the vote of directors required by Section

1 22.164;

2 (2) if the management of the affairs of the  
3 corporation is vested in the corporation's members under Section  
4 22.202, the winding up, reinstatement, cancellation of event  
5 requiring winding up, revocation of voluntary decision to wind up,  
6 or distribution plan:

7 (A) must be submitted to a vote at an annual,  
8 regular, or special meeting of members; and

9 (B) must be approved by the members by the vote  
10 required by Section 22.164; or

11 (3) if the corporation has members with voting rights:

12 (A) the corporation's board of directors must  
13 approve a resolution:

14 (i) recommending the winding up,  
15 reinstatement, cancellation of event requiring winding up,  
16 revocation of a voluntary decision to wind up, or distribution  
17 plan; and

18 (ii) directing that the winding up,  
19 reinstatement, cancellation of event requiring winding up,  
20 revocation of a voluntary decision to wind up, or distribution plan  
21 of the corporation be submitted to a vote at an annual or special  
22 meeting of members; and

23 (B) the members must approve the action described  
24 by Paragraph (A) in accordance with Section 22.303. (TNPCA 6.01.A  
25 (part), 6.03 (part), 6.04.A (part).)

26 Sec. 22.303. MEETING OF MEMBERS; NOTICE. (a) The  
27 corporation must give to each member entitled to vote at a meeting

1 described by Section 22.302(2) or (3) a written notice stating that  
2 the purpose or one of the purposes of the meeting is to consider the  
3 winding up, reinstatement, cancellation of event requiring winding  
4 up, revocation of the voluntary decision to wind up, or  
5 distribution plan of the corporation. The notice must be given in  
6 the time and manner provided by Chapter 6 and this chapter for the  
7 giving of notice of a meeting to members.

8 (b) A vote of members entitled to vote at the meeting shall  
9 be taken on the resolution to wind up, reinstate, cancel the event  
10 requiring winding up, revoke the voluntary decision to wind up, or  
11 effect the distribution plan of the corporation. The members must  
12 approve the resolution by the vote required under Section 22.164.

13 (c) For a meeting to vote on a distribution plan, the notice  
14 of the meeting must contain the proposed plan of distribution or a  
15 summary of the plan.

16 (d) For a corporation the management of the affairs of which  
17 is vested in its members under Section 22.202, the notice of the  
18 meeting is subject to the provisions of the certificate of  
19 formation or bylaws of the corporation. (TNPCA 6.01.A (part), 6.03  
20 (part), 6.04.A (part).)

21 Sec. 22.304. APPLICATION AND DISTRIBUTION OF PROPERTY. (a)  
22 After all liabilities and obligations of a corporation in the  
23 process of winding up are paid, satisfied, and discharged in  
24 accordance with Section 11.053, the property of the corporation  
25 shall be applied and distributed as follows:

26 (1) property held by the corporation on a condition  
27 requiring return, transfer, or conveyance because of the winding up

1 or termination shall be returned, transferred, or conveyed in  
2 accordance with that requirement; and

3 (2) unless otherwise provided by the corporation's  
4 certificate of formation, the remaining property of the corporation  
5 shall be distributed only for tax-exempt purposes to one or more  
6 organizations that are exempt under Section 501(c)(3), Internal  
7 Revenue Code, or described by Section 170(c)(1) or (2), Internal  
8 Revenue Code, under a plan of distribution adopted under this  
9 chapter.

10 (b) A district court of the county in which the  
11 corporation's principal office is located shall distribute to one  
12 or more organizations exempt under Section 501(c)(3), Internal  
13 Revenue Code, or described by Section 170(c)(1) or (2), Internal  
14 Revenue Code, the property of the corporation remaining after a  
15 distribution of property under the plan of distribution. The court  
16 shall make the distribution in the manner the court determines will  
17 best accomplish the general purposes for which the corporation was  
18 organized. (TNPCA 6.02.A(2), (3).)

19 Sec. 22.305. DISTRIBUTION PLAN. A plan providing for the  
20 distribution of property may be adopted by a corporation in the  
21 process of winding up, and shall be adopted by a corporation to  
22 authorize a transfer or conveyance of assets for which this chapter  
23 requires a plan of distribution, in the manner provided by this  
24 subchapter. (TNPCA 6.03 (part).)

25 Sec. 22.306. LIMITED SURVIVAL AFTER NATURAL EXPIRATION. (a)  
26 A corporation that was terminated by the expiration of the period of  
27 its duration may, during the three-year period following the date

1 of termination, amend the corporation's certificate of formation by  
2 following the procedures prescribed by Chapter 11 and this chapter  
3 to extend or perpetuate the corporation's period of duration. The  
4 expiration of a corporation's period of duration does not give a  
5 member or creditor of the corporation a vested right to prevent the  
6 corporation from taking action under this subsection.

7 (b) An act or contract of a terminated corporation during a  
8 period within which the corporation could have extended the  
9 corporation's existence under this section, regardless of whether  
10 the corporation has taken action to extend its existence, is not  
11 invalidated by the expiration of the period of duration. (TNPCA  
12 7.12.G.)

13 Sec. 22.307. RESPONSIBILITY FOR WINDING UP. If a  
14 corporation determines or is required to wind up, the winding up of  
15 the corporation's affairs shall be managed by:

16 (1) the directors, if management of the affairs is not  
17 vested in the corporation's members under Section 22.202; or

18 (2) the members, if management of the affairs is  
19 vested in the corporation's members under Section 22.202. (New.)

20 [Sections 22.308-22.350 reserved for expansion]

#### 21 SUBCHAPTER H. RECORDS AND REPORTS

22 Sec. 22.351. MEMBER'S RIGHT TO INSPECT BOOKS AND RECORDS. A  
23 member of a corporation, on written demand stating the purpose of  
24 the demand, is entitled to examine and copy at the member's expense,  
25 in person or by agent, accountant, or attorney, at any reasonable  
26 time and for a proper purpose, the books and records of the  
27 corporation relevant to that purpose. (TNPCA 2.23.B.)

1           Sec. 22.352. FINANCIAL RECORDS AND ANNUAL REPORTS. (a) A  
2 corporation shall maintain current and accurate financial records  
3 with complete entries as to each financial transaction of the  
4 corporation, including income and expenditures, in accordance with  
5 generally accepted accounting principles.

6           (b) Based on the records maintained under Subsection (a),  
7 the board of directors of the corporation shall annually prepare or  
8 approve a financial report for the corporation for the preceding  
9 year. The report must conform to accounting standards as adopted by  
10 the American Institute of Certified Public Accountants and must  
11 include:

- 12                     (1) a statement of support, revenue, and expenses;
- 13                     (2) a statement of changes in fund balances;
- 14                     (3) a statement of functional expenses; and
- 15                     (4) a balance sheet for each fund. (TNPCA 2.23A.A, B.)

16           Sec. 22.353. AVAILABILITY OF FINANCIAL INFORMATION FOR  
17 PUBLIC INSPECTION. (a) A corporation shall keep records, books,  
18 and annual reports of the corporation's financial activity at the  
19 corporation's registered or principal office in this state for at  
20 least three years after the close of the fiscal year.

21           (b) The corporation shall make the records, books, and  
22 reports available to the public for inspection and copying at the  
23 corporation's registered or principal office during regular  
24 business hours. The corporation may charge a reasonable fee for  
25 preparing a copy of a record or report. (TNPCA 2.23A.C.)

26           Sec. 22.354. FAILURE TO MAINTAIN FINANCIAL RECORD OR  
27 PREPARE ANNUAL REPORT; OFFENSE. (a) A corporation commits an



1 offense if the corporation fails to maintain a financial record,  
2 prepare an annual report, or make the record or report available to  
3 the public in the manner required by Section 22.353.

4 (b) An offense under this section is a Class B misdemeanor.  
5 (TNPCA 2.23A.D.)

6 Sec. 22.355. EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING  
7 TO FINANCIAL RECORDS AND ANNUAL REPORTS. Sections 22.352, 22.353,  
8 and 22.354 do not apply to:

9 (1) a corporation that solicits funds only from  
10 members of the corporation;

11 (2) a corporation that does not intend to solicit and  
12 receive and does not actually raise or receive during a fiscal year  
13 contributions in an amount exceeding \$10,000 from a source other  
14 than its own membership;

15 (3) a private institution of higher education  
16 described by Section 61.003(15), Education Code, accredited by a  
17 recognized accrediting agency as defined by Section 61.003(13),  
18 Education Code, or authorized to grant degrees under a certificate  
19 of authority issued by the Texas Higher Education Coordinating  
20 Board or a foundation chartered for the benefit of the institution  
21 or any component part of the institution, a proprietary school that  
22 has received a certificate of approval from the commissioner of  
23 education, a public institution of higher education or a foundation  
24 chartered for the benefit of the institution or any component part  
25 of the institution, or an elementary or secondary school;

26 (4) a religious institution that is a church, an  
27 ecclesiastical or denominational organization, or another

1 established physical place for worship at which religious services  
2 are the primary activity and are regularly conducted;

3 (5) a trade association or professional society the  
4 income of which is principally derived from membership dues and  
5 assessments, sales, or services;

6 (6) an insurer licensed and regulated by the Texas  
7 Department of Insurance;

8 (7) an organization the charitable activities of which  
9 relate to public concern in the conservation and protection of  
10 wildlife, fisheries, and allied natural resources; or

11 (8) an alumni association of a public or private  
12 institution of higher education in this state that is recognized  
13 and acknowledged as the official alumni association by the  
14 institution. (TNPCA 2.23A.E.)

15 Sec. 22.356. CORPORATIONS ASSISTING STATE AGENCIES. (a) In  
16 this section, "state agency" means:

17 (1) a board, commission, department, office, or other  
18 entity that is in the executive branch of state government and that  
19 was created by the constitution or a statute of this state,  
20 including an institution of higher education as defined by Section  
21 61.003, Education Code;

22 (2) the legislature or a legislative agency; or

23 (3) the supreme court, the court of criminal appeals,  
24 a court of appeals, the state bar, or another state judicial agency.

25 (b) The books and records of a corporation other than a bona  
26 fide alumni association are subject to audit at the discretion of  
27 the state auditor if:

1           (1) the corporation's charter specifically dedicates  
2 the corporation's activities to the benefit of a particular state  
3 agency; and

4           (2) a board member, officer, or employee of that state  
5 agency sits on the board of directors of the corporation in other  
6 than an ex officio capacity.

7           (c) If the corporation's charter specifically dedicates the  
8 corporation's activities to the benefit of a particular state  
9 agency but the conditions described by Subsection (b)(2) do not  
10 exist, a corporation shall file with the secretary of state a copy  
11 of the report required by Section 22.352(b) for the preceding  
12 fiscal year not later than the 89th day after the last day of the  
13 corporation's fiscal year. (TNPCA 2.23B.)

14           Sec. 22.357. REPORT OF DOMESTIC AND FOREIGN CORPORATIONS.

15           (a) The secretary of state may require a domestic corporation or a  
16 foreign corporation registered to conduct affairs in this state to  
17 file a report in accordance with Chapter 4 not more than once every  
18 four years as required by this subchapter. The report must state:

19                   (1) the name of the corporation;

20                   (2) the state or country under the laws of which the  
21 corporation is incorporated;

22                   (3) the address of the registered office of the  
23 corporation in this state and the name of the registered agent at  
24 that address;

25                   (4) if the corporation is a foreign corporation, the  
26 address of the principal office of the corporation in the state or  
27 country under the laws of which the corporation is incorporated;

1 and

2 (5) the names and addresses of the directors and  
3 officers of the corporation.

4 (b) A corporation required to prepare a report under this  
5 section shall prepare the report on a form adopted by the secretary  
6 of state for that purpose and shall include in the report  
7 information that is accurate as of the date the report is executed.  
8 An officer or, if the corporation is in the hands of a receiver or  
9 trustee, the receiver or trustee shall sign the report on behalf of  
10 the corporation. (TNPCA 9.01.A, B.)

11 Sec. 22.358. NOTICE REGARDING REPORT. (a) The secretary of  
12 state shall send written notice that the report required by Section  
13 22.357 is due. The notice must be:

14 (1) addressed to the corporation; and

15 (2) mailed to the corporation's registered agent or to  
16 the corporation at:

17 (A) the last known address of the corporation as  
18 it appears on record in the office of the secretary of state; or

19 (B) any other known place of business of the  
20 corporation.

21 (b) The secretary of state shall include with the notice a  
22 report form to be prepared and filed as provided by this subchapter.  
23 (TNPCA 9.01.C, D.)

24 Sec. 22.359. FILING OF REPORT. A copy of the report must be  
25 filed with the secretary of state in accordance with Chapter 4 not  
26 later than the 30th day after the date notice is mailed under  
27 Section 22.358. (TNPCA 9.01.C (part), E (part).)

1           Sec. 22.360. FAILURE TO FILE REPORT. (a) A domestic or  
2 foreign corporation that fails to file a report under Sections  
3 22.357 and 22.359 when the report is due forfeits the corporation's  
4 right to conduct affairs in this state.

5           (b) The forfeiture takes effect, without judicial action,  
6 when the secretary of state enters on the record of the corporation  
7 kept in the office of the secretary of state:

8           (1) the words "right to conduct affairs forfeited";  
9 and

10           (2) the date of forfeiture. (TNPCA 9.02.A, B (part).)

11           Sec. 22.361. NOTICE OF FORFEITURE. Notice of forfeiture  
12 under Section 22.360 shall be mailed to the corporation's  
13 registered agent at the registered office or to the corporation at:

14           (1) the address of the principal place of business of  
15 the corporation as it appears in the certificate of formation;

16           (2) the last known address of the corporation as it  
17 appears on record in the office of the secretary of state; or

18           (3) any other known place of business of the  
19 corporation. (TNPCA 9.02.B (part).)

20           Sec. 22.362. EFFECT OF FORFEITURE. (a) Unless the right of  
21 the corporation to conduct affairs in this state is revived under  
22 Section 22.363:

23           (1) the corporation may not maintain an action, suit,  
24 or proceeding in a court of this state; and

25           (2) a successor or assignee of the corporation may not  
26 maintain an action, suit, or proceeding in a court of this state on  
27 a right, claim, or demand arising from the conduct of affairs by the

1 corporation in this state.

2 (b) This section does not affect the right of an assignee of  
3 the corporation as:

4 (1) the holder in due course of a negotiable  
5 promissory note, check, or bill of exchange; or

6 (2) the bona fide purchaser for value of a warehouse  
7 receipt, stock certificate, or other instrument negotiable by law.

8 (c) The forfeiture of the right to conduct affairs in this  
9 state does not:

10 (1) impair the validity of a contract or act of the  
11 corporation; or

12 (2) prevent the corporation from defending an action,  
13 suit, or proceeding in a court of this state. (TNPCA 9.02.B  
14 (part).)

15 Sec. 22.363. REVIVAL OF RIGHT TO CONDUCT AFFAIRS. (a) A  
16 corporation may be relieved from a forfeiture under Section 22.360  
17 by filing the required report, accompanied by the revival fee, not  
18 later than the 120th day after the date of mailing of the notice of  
19 forfeiture under Section 22.361.

20 (b) If a corporation complies with Subsection (a), the  
21 secretary of state shall:

22 (1) revive the right of the corporation to conduct  
23 affairs in this state;

24 (2) cancel the words regarding the forfeiture on the  
25 record of the corporation; and

26 (3) endorse on that record the word "revived" and the  
27 date of revival. (TNPCA 9.02.C (part), D.)

## 1           Sec. 22.364. FAILURE TO REVIVE; TERMINATION OR REVOCATION.

2       (a) The failure of a corporation that has forfeited its right to  
3       conduct affairs in this state to revive that right under Section  
4       22.363 is grounds for:

5               (1) the involuntary termination of the domestic  
6       corporation; or

7               (2) the revocation of the foreign corporation's  
8       registration to transact business in this state.

9       (b) The termination or revocation takes effect, without  
10       judicial action, when the secretary of state enters on the record of  
11       the corporation filed in the office of the secretary of state the  
12       word "forfeited" and the date of forfeiture and cites this chapter  
13       as authority for that forfeiture. (TNPCA 9.02.E.)

14           Sec. 22.365. REINSTATEMENT. (a) A corporation that is  
15       terminated or the registration of which has been revoked as  
16       provided by Section 22.364 may be relieved of the termination or  
17       revocation by filing the report required by Section 22.357,  
18       accompanied by the filing fee for the report, if the corporation has  
19       paid:

20               (1) all fees, taxes, penalties, and interest due and  
21       accruing before the termination or revocation; and

22               (2) an amount equal to the total taxes from the date of  
23       termination or revocation to the date of reinstatement that would  
24       have been payable if the corporation had not been terminated or had  
25       its registration revoked.

26       (b) When the report is filed and the filing fee is paid to  
27       the secretary of state, the secretary of state shall:

1           (1) reinstate the certificate of formation or  
2 registration without judicial action;

3           (2) cancel the word "forfeited" on the record; and

4           (3) endorse on the record kept in the secretary's  
5 office relating to the corporation the words "set aside" and the  
6 date of the reinstatement.

7           (c) If a termination or revocation is set aside under this  
8 section, the corporation shall determine from the secretary of  
9 state whether the name of the corporation is available. If the name  
10 of the corporation is not available at the time of reinstatement,  
11 the corporation shall amend its corporate name under this code.

12 (TNPCA 9.02.F (part), G.)

13           [Sections 22.366-22.400 reserved for expansion]

14           SUBCHAPTER I. CHURCH BENEFITS BOARDS

15           Sec. 22.401. DEFINITION. In this chapter, "church benefits  
16 board" means an organization described by Section 414(e)(3)(A),  
17 Internal Revenue Code, that:

18           (1) has the principal purpose or function of  
19 administering or funding a plan or program to provide retirement  
20 benefits, welfare benefits, or both for the ministers or employees  
21 of a church or a conference, convention, or association of  
22 churches; and

23           (2) is controlled by or affiliated with a church or a  
24 conference, convention, or association of churches. (V.A.C.S.  
25 1407a, Sec. 1.)

26           Sec. 22.402. PENSIONS AND BENEFITS. When authorized by the  
27 corporation's members or as otherwise provided by law, a domestic



1 or foreign nonprofit corporation formed for a religious purpose may  
2 provide, directly or through a separate church benefits board, for  
3 the support and payment of benefits and pensions to:

4 (1) the ministers, teachers, employees, trustees,  
5 directors, or other functionaries of the corporation;

6 (2) the ministers, teachers, employees, trustees,  
7 directors, or other functionaries of organizations controlled by or  
8 affiliated with a church or a conference, convention, or  
9 association of churches under the jurisdiction and control of the  
10 corporation; and

11 (3) the spouse, children, dependents, or other  
12 beneficiaries of the persons described by Subdivisions (1) and (2).  
13 (V.A.C.S. 1407a, Sec. 2.)

14 Sec. 22.403. CONTRIBUTIONS. (a) A church benefits board  
15 may provide for:

16 (1) the collection of contributions and other payments  
17 to assist in providing pensions and benefits under this subchapter;  
18 and

19 (2) the creation, maintenance, investment,  
20 management, and disbursement of necessary annuities, endowments,  
21 reserves, or other funds for a purpose under Subdivision (1).

22 (b) A church benefits board may receive payments from a  
23 trust fund or corporation that funds a church plan as defined by  
24 Section 414(e), Internal Revenue Code. (V.A.C.S. 1407a, Sec. 3.)

25 Sec. 22.404. POWER TO ACT AS TRUSTEE. A church benefits  
26 board may act as:

27 (1) a trustee under a lawful trust committed to the

1 board by contract, will, or otherwise; and

2 (2) an agent for the performance of a lawful act  
3 relating to the purposes of the trust. (V.A.C.S. 1407a, Sec. 4  
4 (part).)

5 Sec. 22.405. DOCUMENTS AND AGREEMENTS. A church benefits  
6 board may provide to a program participant a certificate or  
7 agreement of participation, a debenture, or an indemnification  
8 agreement, as appropriate to accomplish the purposes of the board.  
9 (V.A.C.S. 1407a, Sec. 4 (part).)

10 Sec. 22.406. INDEMNIFICATION. A church benefits board, or  
11 an affiliate wholly owned by the board, may agree to indemnify  
12 against damage or risk of loss:

13 (1) a minister, teacher, employee, trustee,  
14 functionary, or director affiliated with the board or a family  
15 member, dependent, or beneficiary of one of those persons;

16 (2) a church or a convention, conference, or  
17 association of churches; or

18 (3) an organization that is controlled by or  
19 affiliated with the board or with a church or a convention,  
20 conference, or association of churches. (V.A.C.S. 1407a, Sec. 5.)

21 Sec. 22.407. PROTECTION OF BENEFITS. (a) Money or other  
22 benefits that have been or will be provided to a participant or a  
23 beneficiary under a plan or program provided by or through a church  
24 benefits board under this subchapter are not subject to execution,  
25 attachment, garnishment, or other process and may not be  
26 appropriated or applied as part of a judicial, legal, or equitable  
27 process or operation of a law other than a constitution to pay a

1 debt or liability of the participant or beneficiary.

2 (b) This section does not apply to a qualified domestic  
3 relations order or an amount required by the church benefits board  
4 to recover costs or expenses incurred in the plan or program.  
5 (V.A.C.S. 1407a, Sec. 6.)

6 Sec. 22.408. ASSIGNMENT OF BENEFITS. An assignment or  
7 transfer or an attempt to make an assignment or transfer by a  
8 beneficiary of money, benefits, or other rights under a plan or  
9 program under this subchapter is void if:

10 (1) the plan or program contains a provision  
11 prohibiting the assignment or other transfer without the written  
12 consent of the church benefits board; and

13 (2) the beneficiary assigns or transfers or attempts  
14 to make an assignment or transfer without that consent. (V.A.C.S.  
15 1407a, Sec. 7.)

16 Sec. 22.409. INSURANCE CODE NOT APPLICABLE. The Insurance  
17 Code does not apply to a church benefits board or a program, plan,  
18 benefit, or activity of the board or a person affiliated with the  
19 board. (V.A.C.S. 1407a, Sec. 8.)

## 20 CHAPTER 23. SPECIAL-PURPOSE CORPORATIONS

### 21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 23.001. DETERMINATION OF APPLICABLE LAW. (a) A  
23 corporation created under this chapter or under a special statute  
24 outside this code, to the extent not inconsistent with a special  
25 statute regarding a particular corporation, is governed by:

26 (1) Title 1 and Chapter 21, if the corporation is  
27 organized for profit; and

1           (2) Title 1 and Chapter 22, if the corporation is  
2 organized not for profit.

3           (b) If a special statute does not contain any provision  
4 regarding a matter provided for in Title 1 or Chapter 21 or 22, or if  
5 the special statute specifically provides that the general laws for  
6 corporations supplement the statute, to the extent consistent with  
7 the special statute:

8           (1) Title 1 and Chapter 21 apply to a corporation  
9 organized for profit; and

10           (2) Title 1 and Chapter 22 apply to a corporation  
11 organized not for profit. (TBCA 9.14.A; TMCLA 1.03; TNPCA 10.04.A,  
12 C.)

13           Sec. 23.002. APPLICABILITY OF FILING REQUIREMENTS. Except  
14 as otherwise provided by the special statute, a document to be filed  
15 with the secretary of state under a special statute shall be  
16 executed and filed in accordance with Chapter 4. (New.)

17           Sec. 23.003. DOMESTIC CORPORATION ORGANIZED UNDER SPECIAL  
18 STATUTE. A corporation organized under a special statute other than  
19 this code is not considered a "domestic corporation" formed under  
20 this code, although this code may apply to the corporation. (New.)

21           [Sections 23.004-23.050 reserved for expansion]

22           SUBCHAPTER B. BUSINESS DEVELOPMENT CORPORATIONS

23           Sec. 23.051. DEFINITIONS. In this subchapter:

24           (1) "Corporation" means a business development  
25 corporation organized under this subchapter.

26           (2) "Financial institution" means a banking  
27 corporation or trust company, savings and loan association,

1 governmental agency, insurance company, or related corporation,  
2 partnership, foundation, or other institution engaged primarily in  
3 lending or investing funds.

4 (3) "Loan limit" means the maximum amount permitted to  
5 be outstanding at one time on loans made by a member to a  
6 corporation.

7 (4) "Member" means a financial institution authorized  
8 to do business in this state that undertakes to lend money to a  
9 corporation. (V.A.C.S. 1528g, Sec. 1.)

10 Sec. 23.052. ORGANIZERS. Subject to The Securities Act  
11 (Article 581-1 et seq., Vernon's Texas Civil Statutes), 25 or more  
12 persons, the majority of whom must be residents of this state, may  
13 form a business development corporation to promote, develop, and  
14 advance the prosperity and economic welfare of this state.  
15 (V.A.C.S. 1528g, Sec. 2(a).)

16 Sec. 23.053. PURPOSES. (a) A business development  
17 corporation may be organized as a:

18 (1) for-profit corporation under Chapter 21; or

19 (2) nonprofit corporation under Chapter 22.

20 (b) The business development corporation must be organized  
21 to:

22 (1) promote, stimulate, develop, and advance the  
23 business prosperity and economic welfare of this state and the  
24 residents of this state;

25 (2) encourage and assist, through loans, investments,  
26 or other business transactions, new business and industry in this  
27 state;

1           (3) rehabilitate and assist existing industry in this  
2 state;

3           (4) stimulate and assist in the expansion of business  
4 activity that will tend to promote the business development and  
5 maintain the economic stability of this state, provide maximum  
6 opportunities for employment, encourage thrift, and improve the  
7 standard of living of the residents of this state;

8           (5) cooperate and act in conjunction with other public  
9 or private organizations in the promotion and advancement of  
10 industrial, commercial, agricultural, and recreational  
11 developments in this state; or

12           (6) provide financing for the promotion, development,  
13 and conduct of business activity in this state. (V.A.C.S. 1528g,  
14 Secs. 2(b), (c) (part).)

15           Sec. 23.054. POWERS. (a) The powers of a corporation  
16 include, in addition to the powers conferred on the corporation by  
17 Chapters 2 and 21 or 22, as applicable, the power to:

18           (1) elect, appoint, and employ officers, agents, and  
19 employees;

20           (2) make contracts and incur liabilities for a purpose  
21 of the corporation;

22           (3) borrow money on a secured or unsecured basis to  
23 carry out a purpose of the corporation;

24           (4) issue for the purpose of borrowing money a bond,  
25 debenture, note, or other evidence of indebtedness, whether secured  
26 or unsecured;

27           (5) secure an evidence of indebtedness by mortgage,

1 pledge, deed of trust, or other lien on a property, franchise,  
2 right, or privilege of the corporation, or any part of or interest  
3 in those items, without securing shareholder or member approval;

4 (6) make a secured or unsecured loan and establish and  
5 regulate the terms and conditions of that loan and the charges for  
6 interest or service connected with that loan;

7 (7) purchase, receive, hold, lease, or otherwise  
8 acquire, and sell, convey, transfer, lease, or otherwise dispose  
9 of, property and exercise those rights and privileges incidental  
10 and appurtenant to the acquisition or disposal of the property and  
11 to the use of the property, including any property acquired by the  
12 corporation periodically in the satisfaction of a debt or  
13 enforcement of an obligation;

14 (8) acquire improved or unimproved real property to  
15 construct an industrial plant or other business establishment on  
16 the property or dispose of the real property for the construction of  
17 an industrial plant or other business establishment;

18 (9) acquire, construct or reconstruct, alter, repair,  
19 maintain, operate, sell, convey, transfer, lease, or otherwise  
20 dispose of an industrial plant or business establishment;

21 (10) protect the corporation's position as creditor by  
22 acquiring the goodwill, business, rights, property, including a  
23 share, bond, debenture, note, other evidence of indebtedness, other  
24 asset, or any part of an asset or interest in an asset, of a person  
25 to whom the corporation loaned money and assume, undertake, or pay  
26 an obligation, debt, or liability of the person;

27 (11) mortgage, pledge, or otherwise encumber any

1 property, right, or thing of value, acquired under Subdivision (7),  
2 (8), (9), or (10), as security for the payment of a part of the  
3 purchase price;

4 (12) promote the establishment of local development  
5 corporations in the various communities of this state, enter into  
6 agreements with those local development corporations, and  
7 cooperate with, assist, or otherwise encourage the local  
8 foundations; and

9 (13) participate with a properly authorized federal  
10 lending agency in the making of loans.

11 (b) A corporation may approve an application for a loan  
12 under Subsection (a)(6) only if the applicant demonstrates that:

13 (1) the applicant applied for the loan through  
14 ordinary banking channels; and

15 (2) the loan has been refused by at least two banks or  
16 other financial institutions. (V.A.C.S. 1528g, Sec. 3(a).)

17 Sec. 23.055. STATEWIDE OPERATION. A corporation organized  
18 under this subchapter is a state development company as defined by  
19 Section 103, Small Business Investment Act of 1958 (15 U.S.C.  
20 Section 662), as amended, or similar federal legislation, and may  
21 operate on a statewide basis. (V.A.C.S. 1528g, Sec. 3(b).)

22 Sec. 23.056. CERTIFICATE OF FORMATION. (a) The certificate  
23 of formation of a corporation must state:

24 (1) the name of the corporation;

25 (2) the purpose or purposes for which the corporation  
26 is organized as required by Section 23.053; and

27 (3) any other information required by:



1 (A) Chapter 4; and

2 (B) Chapter 21 or 22, as applicable.

3 (b) The name of a corporation must include the words  
4 "Business Development Corporation." (V.A.C.S. 1528g, Sec. 2(c)  
5 (part).)

6 Sec. 23.057. MANAGEMENT BY BOARD OF DIRECTORS; NUMBER OF  
7 DIRECTORS. (a) The organization, control, and management of a  
8 corporation are vested in a board of directors. The board must  
9 consist of not fewer than 15 and not more than 21 directors.

10 (b) The board of directors may exercise any power of the  
11 corporation not conferred on the shareholders or members by law or  
12 by the corporation's bylaws. (V.A.C.S. 1528g, Secs. 9(a), (b).)

13 Sec. 23.058. ELECTION OR APPOINTMENT OF DIRECTORS. (a) The  
14 incorporators of a corporation shall name the directors  
15 constituting the initial board of directors of the corporation.  
16 Directors other than the initial directors shall be elected at each  
17 annual meeting of the corporation. If an annual meeting is not held  
18 at the time designated by the bylaws of the corporation, the  
19 directors shall be elected at a special meeting held in lieu of the  
20 annual meeting.

21 (b) At an annual meeting or special meeting held in lieu of  
22 the annual meeting, the members of the corporation shall elect  
23 two-thirds of the directors, and the shareholders of the  
24 corporation shall elect the remaining directors. (V.A.C.S. 1528g,  
25 Secs. 9(d), (e).)

26 Sec. 23.059. TERM OF OFFICE; VACANCY. (a) A director of a  
27 corporation holds office until the next annual election of

1 directors and until a successor is elected and qualified, unless  
2 the director is removed at an earlier date in accordance with the  
3 corporation's bylaws.

4 (b) A vacancy in the office of a director elected by the  
5 members shall be filled by the directors elected by the members, and  
6 a vacancy in the office of a director elected by the shareholders  
7 shall be filled by the directors elected by the shareholders.  
8 (V.A.C.S. 1528g, Secs. 9(f), (g).)

9 Sec. 23.060. OFFICERS. The board of directors of a  
10 corporation shall appoint a president, a treasurer, and any other  
11 agent or officer of the corporation and shall fill each vacancy  
12 other than a vacancy on the board. (V.A.C.S. 1528g, Sec. 9(c)  
13 (part).)

14 Sec. 23.061. PARTICIPATION AS OWNER. (a) An individual,  
15 corporation, or other organization authorized to conduct business  
16 in this state, including a public utility company, insurance and  
17 casualty company, or foreign corporation licensed to do business in  
18 this state, or a trust may acquire, purchase, hold, sell, assign,  
19 transfer, mortgage, pledge, or otherwise dispose of a bond,  
20 security, or other evidence of indebtedness created by, or shares  
21 of, the corporation.

22 (b) An owner of shares of the corporation may exercise any  
23 right, power, or privilege of that ownership, including the right  
24 to vote. (V.A.C.S. 1528g, Sec. 4.)

25 Sec. 23.062. FINANCIAL INSTITUTION AS MEMBER OF  
26 CORPORATION. (a) A financial institution may become a member of a  
27 corporation and may make loans to the corporation as provided by

1 this chapter.

2 (b) A financial institution may request membership in the  
3 corporation by applying to the corporation's board of directors in  
4 the manner prescribed by the board. Membership in the corporation  
5 takes effect on the board's acceptance of the application.

6 (c) A financial institution that is a member of a  
7 corporation may acquire, purchase, hold, sell, assign, transfer,  
8 mortgage, pledge, or otherwise dispose of a bond, security, or  
9 other evidence of indebtedness created by, or a share of, the  
10 corporation. As owner of shares of the corporation, a financial  
11 institution may exercise any right, power, or privilege of that  
12 ownership, including the right to vote. A member of a corporation  
13 may not acquire shares of the corporation in an amount greater than  
14 10 percent of the member's loan limit. The amount of shares of the  
15 corporation that a member may acquire is in addition to the amount  
16 of shares of corporations that the member may otherwise acquire.

17 (d) A financial institution that is not a member of the  
18 corporation may not acquire any shares of the corporation.  
19 (V.A.C.S. 1528g, Sec. 5.)

20 Sec. 23.063. WITHDRAWAL OF MEMBER. (a) On written notice to  
21 the corporation's board of directors, a member may withdraw from a  
22 corporation on the date stated in the notice. The date of a  
23 member's withdrawal must be at least six months after the date  
24 notice is given under this subsection.

25 (b) A member is not obligated to make a loan to the  
26 corporation pursuant to a call made after the date of the member's  
27 withdrawal from the corporation, but a member shall fulfill any

1 obligation that has accrued or for which a commitment has been made  
2 before the withdrawal date. (V.A.C.S. 1528g, Sec. 7.)

3 Sec. 23.064. POWERS OF SHAREHOLDERS AND MEMBERS. The  
4 shareholders and members of a corporation may:

5 (1) determine the number of directors and elect the  
6 directors as provided by Section 23.058;

7 (2) make, amend, and repeal bylaws of the corporation;  
8 or

9 (3) exercise any other power of the corporation that  
10 is conferred on the shareholders and members by the bylaws.  
11 (V.A.C.S. 1528g, Sec. 8(a).)

12 Sec. 23.065. VOTING BY SHAREHOLDER OR MEMBER. (a) Each  
13 shareholder of a corporation has one vote, in person or by proxy,  
14 for each share held by the shareholder.

15 (b) Each member of a corporation has one vote in person or by  
16 proxy.

17 (c) A member with a loan limit that exceeds \$1,000 has one  
18 additional vote, in person or by proxy, for each additional \$1,000  
19 the member may have outstanding on loans to the corporation at any  
20 one time as determined under Section 23.068. (V.A.C.S. 1528g, Sec.  
21 8(b).)

22 Sec. 23.066. LOAN TO CORPORATION. (a) When called on by a  
23 corporation to make a loan to the corporation, a member of the  
24 corporation shall make the loan on those terms and conditions  
25 periodically approved by the board of directors.

26 (b) A loan made to the corporation by a member shall be  
27 evidenced by a bond, debenture, note, or other evidence of

1 indebtedness of the corporation that:

2 (1) is freely transferable at any time; and

3 (2) accrues interest at a rate of not less than  
4 one-fourth of one percent more than the rate of interest determined  
5 by the board of directors to be the prime rate prevailing on the  
6 date of issuance on unsecured commercial loans. (V.A.C.S. 1528g,  
7 Secs. 6(a), (f).)

8 Sec. 23.067. PROHIBITED LOAN. (a) A member may not make a  
9 loan to a corporation if, immediately after the loan would be made,  
10 the total amount of the obligations of the corporation would exceed  
11 50 times the capital of the corporation.

12 (b) For purposes of this section, the capital of the  
13 corporation includes the amount of the outstanding shares of the  
14 corporation, whether common or preferred, and the earned or paid-in  
15 surplus of the corporation. (V.A.C.S. 1528g, Sec. 6(c).)

16 Sec. 23.068. LOAN LIMITS. (a) A loan limit shall be  
17 established at the \$1,000 amount nearest to the amount computed in  
18 accordance with this section.

19 (b) The total amount outstanding on loans made to a  
20 corporation by a member at any one time, when added to the amount of  
21 the investment in the shares of the corporation then held by the  
22 member, may not exceed:

23 (1) 20 percent of the total amount then outstanding on  
24 loans to the corporation by all members, including outstanding  
25 amounts validly called for a loan but not yet loaned; or

26 (2) the following limit, to be determined as of the  
27 time the member becomes a member of the corporation, or at any time

1 requested by a member on the basis of the audited balance sheet of  
2 the member at the close of its fiscal year immediately preceding its  
3 application for membership or, in the case of an insurance company,  
4 its last annual statement to the Texas Department of Insurance:

5 (A) an amount equal to the lesser of \$750,000 or  
6 two percent of the capital and surplus of a commercial bank or trust  
7 company;

8 (B) an amount equal to one percent of the total  
9 outstanding loans made by a savings and loan association;

10 (C) an amount equal to one percent of the capital  
11 and unassigned surplus of a stock insurance company other than a  
12 fire insurance company;

13 (D) an amount equal to one percent of the  
14 unassigned surplus of a mutual insurance company other than a fire  
15 insurance company;

16 (E) an amount equal to one-tenth of one percent  
17 of the assets of a fire insurance company; or

18 (F) the limits approved by the board of directors  
19 of the corporation for a government pension fund or other financial  
20 institution.

21 (c) Subject to Subsection (b), each call made by the  
22 corporation shall be prorated among the members of the corporation  
23 in substantially the same proportion that the adjusted loan limit  
24 of each member bears to the aggregate of the adjusted loan limits of  
25 all members.

26 (d) For purposes of Subsection (c), the adjusted loan limit  
27 of a member is the amount of the member's loan limit, reduced by the

1 balance of outstanding loans made by the member to the corporation  
2 and the investment in shares of the corporation held by the member  
3 at the time of the call. (V.A.C.S. 1528g, Secs. 6(b), (d), (e).)

4 Sec. 23.069. SURPLUS. (a) A corporation shall set apart as  
5 earned surplus not less than 10 percent of the corporation's net  
6 earnings each year until the surplus, with any unimpaired surplus  
7 paid in, is equal to one-half of the amount paid in on the shares  
8 then outstanding. The surplus shall be kept to secure against  
9 losses and contingencies. If the surplus becomes impaired, the  
10 surplus shall be reimbursed in the manner provided for its  
11 accumulation.

12 (b) Net earnings and surplus shall be determined by the  
13 board of directors after providing for the required reserves as the  
14 directors consider advisable. A good faith determination of net  
15 earnings and surplus by the directors under this subsection is  
16 conclusive. (V.A.C.S. 1528g, Sec. 10.)

17 Sec. 23.070. DEPOSITORY. (a) A corporation may deposit the  
18 corporation's funds in a banking institution that has been  
19 designated as a depository by a vote of the majority of the  
20 directors present at an authorized meeting of the board of  
21 directors of the corporation, excluding a director who is an  
22 officer or director of the designated depository.

23 (b) The corporation may not receive money on deposit.  
24 (V.A.C.S. 1528g, Sec. 11.)

25 Sec. 23.071. ANNUAL REPORT; PROVISION OF REQUIRED  
26 INFORMATION. (a) A corporation shall annually make a report of its  
27 condition to the banking commissioner and the Texas Department of

1 Insurance.

2 (b) A corporation shall provide any information that is  
3 required by the secretary of state. (V.A.C.S. 1528g, Sec. 12.)

4 [Sections 23.072-23.100 reserved for expansion]

5 SUBCHAPTER C. GRAND LODGES

6 Sec. 23.101. FORMATION. (a) An institution or order, by  
7 resolution or other consent of its members, may incorporate under  
8 this subchapter if the institution or order is:

9 (1) the grand lodge of Texas, Ancient, Free and  
10 Accepted Masons;

11 (2) the Grand Royal Arch Chapter of Texas;

12 (3) the Grand Commandery of Knights Templars of Texas;

13 (4) the grand lodge of the Independent Order of Odd  
14 Fellows of Texas; or

15 (5) another similar institution or order organized for  
16 charitable or benevolent purposes.

17 (b) A corporation formed under this subchapter shall file a  
18 certificate of formation in accordance with Chapter 4 that complies  
19 with this subchapter. (V.A.C.S. 1399; New.)

20 Sec. 23.102. APPLICABILITY OF CHAPTER 22. If this  
21 subchapter does not contain any provision regarding a matter  
22 provided for in Chapter 22, to the extent consistent with this  
23 subchapter, Chapter 22 applies to a corporation formed under this  
24 subchapter. (TMCLA 1.03.A (part).)

25 Sec. 23.103. DURATION. A grand body that incorporates under  
26 this subchapter may provide in the grand body's certificate of  
27 formation for the expiration of its corporate powers at the end of a



1 stated number of years. If the certificate of formation does not  
2 provide for the duration of the grand body, the grand body has  
3 perpetual existence. The grand body may by its corporate name have  
4 perpetual succession of its officers and members. (V.A.C.S. 1405.)

5       Sec. 23.104. SUBORDINATE LODGES. (a) The incorporation of  
6 a grand body includes each of its subordinate lodges or bodies  
7 holding a warrant or charter under the grand body.

8       (b) A subordinate body has all of the rights of other  
9 corporations under and by the name given to the grand body in the  
10 warrant or charter issued to the grand body to which it is attached.  
11 Those rights shall be provided for in the charter of the grand body.

12       (c) A subordinate body is subject to the jurisdiction and  
13 control of its respective grand body, and the warrant or charter of  
14 the subordinate body may be revoked by the grand body. (V.A.C.S.  
15 1400.)

16       Sec. 23.105. TRUSTEES AND DIRECTORS. A grand body and a  
17 subordinate of the grand body may elect trustees and directors or  
18 may appoint trustees or directors from among their officers.  
19 (V.A.C.S. 1401 (part).)

20       Sec. 23.106. FRANCHISE TAXES. A corporation formed under  
21 this subchapter is not subject to or required to pay a franchise  
22 tax, except that a corporation is exempt from the franchise tax  
23 imposed by Chapter 171, Tax Code, only if the corporation is  
24 exempted by that chapter. (V.A.C.S. 1407.)

25       Sec. 23.107. GENERAL POWERS. A grand body and a subordinate  
26 of the grand body may take action as directed or provided by law in  
27 the case of other corporations and may make constitutions and

1 bylaws to govern their affairs. (V.A.C.S. 1401 (part).)

2           Sec. 23.108. AUTHORITY REGARDING PROPERTY. (a) A grand  
3 body or subordinate body may acquire and hold property as necessary  
4 or convenient for a site on which to erect a building for the use and  
5 occupancy of the body and to erect homes and schools for members'  
6 widows or orphans or elderly, disabled, or indigent members and may  
7 sell or mortgage the property.

8           (b) A conveyance must be executed by the presiding officer  
9 and attested to by the secretary with the seal.

10           (c) The authority of a subordinate body to sell or to  
11 mortgage property is subject to the conditions periodically  
12 prescribed or established by the grand body to which the  
13 subordinate is attached. (V.A.C.S. 1402.)

14           Sec. 23.109. AUTHORITY REGARDING LOANS. (a) A grand body  
15 incorporated under this subchapter may:

16           (1) loan money held and owned by the grand body for  
17 charitable purposes, for the endowment of any of the institutions  
18 of the grand body, or otherwise; and

19           (2) secure loans by taking and receiving liens on real  
20 property or by another method elected by the grand body.

21           (b) On sale of real property secured by a lien, a grand body  
22 may become the purchaser of the real property and hold title to the  
23 property. (V.A.C.S. 1404.)

24           Sec. 23.110. WINDING UP AND TERMINATION OF SUBORDINATE  
25 BODY. (a) On the winding up and termination of a subordinate body  
26 attached to a grand body, all property and rights existing in the  
27 subordinate body pass to and vest in the grand body to which it was

1 attached, subject to the payment of any debt owed by the subordinate  
2 body.

3 (b) Notwithstanding a grand body's liability for the debt of  
4 a subordinate body under Subsection (a), the grand body is not  
5 liable for an amount greater than the actual cash value of the  
6 subordinate body's effects or authority. (V.A.C.S. 1403.)

7 TITLE 3. LIMITED LIABILITY COMPANIES

8 CHAPTER 101. LIMITED LIABILITY COMPANIES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 101.001. DEFINITIONS. In this title:

11 (1) "Company agreement" means any agreement, written  
12 or oral, of the members concerning the affairs or the conduct of the  
13 business of a limited liability company. A company agreement of a  
14 limited liability company having only one member is not  
15 unenforceable because only one person is a party to the company  
16 agreement.

17 (2) "Foreign limited liability company" or "foreign  
18 company" means a limited liability company formed under the laws of  
19 a jurisdiction other than this state.

20 (3) "Limited liability company" or "company" means a  
21 domestic limited liability company subject to this title. (TLLCA  
22 1.02.A(3), (9); New.)

23 [Sections 101.002-101.050 reserved for expansion]

24 SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

25 Sec. 101.051. CERTAIN PROVISIONS CONTAINED IN CERTIFICATE  
26 OF FORMATION. (a) A provision that may be contained in the company  
27 agreement of a limited liability company may alternatively be

1 included in the certificate of formation of the company as provided  
2 by Section 3.005(b).

3 (b) A reference in this title to the company agreement of a  
4 limited liability company includes any provision contained in the  
5 company's certificate of formation instead of the company agreement  
6 as provided by Subsection (a). (TLLCA 2.09.A (part), 3.02.A  
7 (part).)

8 Sec. 101.052. COMPANY AGREEMENT. (a) Except as provided by  
9 Section 101.054, the company agreement of a limited liability  
10 company governs:

11 (1) the relations among members, managers, and  
12 officers of the company, assignees of membership interests in the  
13 company, and the company itself; and

14 (2) other internal affairs of the company.

15 (b) To the extent that the company agreement of a limited  
16 liability company does not otherwise provide, this title and the  
17 provisions of Title 1 applicable to a limited liability company  
18 govern the internal affairs of the company.

19 (c) Except as provided by Section 101.054, a provision of  
20 this title or Title 1 that is applicable to a limited liability  
21 company may be waived or modified in the company agreement of a  
22 limited liability company.

23 (d) The company agreement may contain any provisions for the  
24 regulation and management of the affairs of the limited liability  
25 company not inconsistent with law or the certificate of formation.  
26 (TLLCA 2.09.A (part).)

27 Sec. 101.053. AMENDMENT OF COMPANY AGREEMENT. The company

1 agreement of a limited liability company may be amended only if each  
2 member of the company consents to the amendment. (TLLCA 2.09.B.)

3 Sec. 101.054. WAIVER OR MODIFICATION OF CERTAIN STATUTORY  
4 PROVISIONS PROHIBITED; EXCEPTIONS. (a) Except as provided by this  
5 section, the following provisions may not be waived or modified in  
6 the company agreement of a limited liability company:

7 (1) this section;

8 (2) Section 101.101(b), 101.206, 101.501, or 101.502;

9 (3) Chapter 1, if the provision is used to interpret a  
10 provision or define a word or phrase contained in a section listed  
11 in this subsection;

12 (4) Chapter 2, except that Section 2.104(c)(2),  
13 2.104(c)(3), or 2.113 may be waived or modified in the company  
14 agreement;

15 (5) Chapter 3, except that Subchapters C and E may be  
16 waived or modified in the company agreement; or

17 (6) Chapter 4, 5, 7, 10, 11, or 12, other than Section  
18 11.056.

19 (b) A provision listed in Subsection (a) may be waived or  
20 modified in the company agreement if the provision that is waived or  
21 modified authorizes the limited liability company to waive or  
22 modify the provision in the company's governing documents.

23 (c) A provision listed in Subsection (a) may be modified in  
24 the company agreement if the provision that is modified specifies:

25 (1) the person or group of persons entitled to approve  
26 a modification; or

27 (2) the vote or other method by which a modification is

1 required to be approved.

2 (d) A provision in this title or in that part of Title 1  
3 applicable to a limited liability company that grants a right to a  
4 person, other than a member, manager, officer, or assignee of a  
5 membership interest in a limited liability company, may be waived  
6 or modified in the company agreement of the company only if the  
7 person consents to the waiver or modification. (New.)

8 [Sections 101.055-101.100 reserved for expansion]

9 SUBCHAPTER C. MEMBERSHIP

10 Sec. 101.101. MEMBERS REQUIRED. (a) A limited liability  
11 company may have one or more members. Except as provided by this  
12 section, a limited liability company must have at least one member.

13 (b) A limited liability company that has managers is not  
14 required to have any members during a reasonable period between the  
15 date the company is formed and the date the first member is admitted  
16 to the company.

17 (c) A limited liability company is not required to have any  
18 members during the period between the date the continued membership  
19 of the last remaining member of the company is terminated and the  
20 date the agreement to continue the company described by Section  
21 11.056 is executed. (TLLCA 4.01.A (part); New.)

22 Sec. 101.102. QUALIFICATION FOR MEMBERSHIP. (a) A person  
23 may be a member of or acquire a membership interest in a limited  
24 liability company unless the person lacks capacity apart from this  
25 code.

26 (b) A person is not required, as a condition to becoming a  
27 member of or acquiring a membership interest in a limited liability

1 company, to:

2 (1) make a contribution to the company;

3 (2) otherwise pay cash or transfer property to the  
4 company; or

5 (3) assume an obligation to make a contribution or  
6 otherwise pay cash or transfer property to the company. (TLLCA  
7 4.01.C; New.)

8 Sec. 101.103. EFFECTIVE DATE OF MEMBERSHIP. (a) A person  
9 who acquires a membership interest in a limited liability company  
10 in connection with the formation of the company becomes a member of  
11 the company on the date the company is formed if the person is named  
12 as an initial member in the company's certificate of formation.

13 (b) A person who acquires a membership interest in a limited  
14 liability company during the formation of the company but who is not  
15 named as an initial member in the company's certificate of  
16 formation becomes a member of the company on the latest of:

17 (1) the date the company is formed;

18 (2) the date stated in the company's records as the  
19 date the person becomes a member of the company; or

20 (3) if the company's records do not state a date  
21 described by Subdivision (2), the date the person's admission to  
22 the company is first reflected in the company's records.

23 (c) A person who, after the formation of a limited liability  
24 company, acquires directly or is assigned a membership interest in  
25 the company becomes a member of the company on approval or consent  
26 of all of the company's members. (TLLCA 4.01.A (part), B.)

27 Sec. 101.104. CLASSES OR GROUPS OF MEMBERS OR MEMBERSHIP

1 INTERESTS. (a) The company agreement of a limited liability  
2 company may:

3 (1) establish within the company classes or groups of  
4 one or more members or membership interests each of which has  
5 certain expressed relative rights, powers, and duties, including  
6 voting rights; and

7 (2) provide for the manner of establishing within the  
8 company additional classes or groups of one or more members or  
9 membership interests each of which has certain expressed relative  
10 rights, powers, and duties, including voting rights.

11 (b) The rights, powers, and duties of a class or group of  
12 members or membership interests described by Subsection (a)(2) may  
13 be stated in the company agreement or stated at the time the class  
14 or group is established.

15 (c) If the company agreement of a limited liability company  
16 does not provide for the manner of establishing classes or groups of  
17 members or membership interests under Subsection (a)(2),  
18 additional classes or groups of members or membership interests may  
19 be established only by the adoption of an amendment to the company  
20 agreement.

21 (d) The rights, powers, or duties of any class or group of  
22 members or membership interests of a limited liability company may  
23 be senior to the rights, powers, or duties of any other class or  
24 group of members or membership interests in the company, including  
25 a previously established class or group. (TLLCA 4.02.)

26 Sec. 101.105. ISSUANCE OF MEMBERSHIP INTERESTS AFTER  
27 FORMATION OF COMPANY. A limited liability company, after the



1 formation of the company, may:

2 (1) issue membership interests in the company to any  
3 person with the approval of all of the members of the company; and

4 (2) if the issuance of a membership interest requires  
5 the establishment of a new class or group of members or membership  
6 interests, establish a new class or group as provided by Sections  
7 101.104(a)(2), (b), and (c). (TLLCA 2.23.D (part), 4.02.A.)

8 Sec. 101.106. NATURE OF MEMBERSHIP INTEREST. (a) A  
9 membership interest in a limited liability company is personal  
10 property.

11 (b) A member of a limited liability company or an assignee  
12 of a membership interest in a limited liability company does not  
13 have an interest in any specific property of the company. (TLLCA  
14 4.04.)

15 Sec. 101.107. WITHDRAWAL OR EXPULSION OF MEMBER PROHIBITED.  
16 A member of a limited liability company may not withdraw or be  
17 expelled from the company. (TLLCA 5.05.)

18 Sec. 101.108. ASSIGNMENT OF MEMBERSHIP INTEREST. (a) A  
19 membership interest in a limited liability company may be wholly or  
20 partly assigned.

21 (b) An assignment of a membership interest in a limited  
22 liability company:

23 (1) is not an event requiring the winding up of the  
24 company; and

25 (2) does not entitle the assignee to:

26 (A) participate in the management and affairs of  
27 the company;

1 (B) become a member of the company; or

2 (C) exercise any rights of a member of the  
3 company. (TLLCA 4.05.A (part).)

4 Sec. 101.109. RIGHTS AND DUTIES OF ASSIGNEE OF MEMBERSHIP  
5 INTEREST BEFORE MEMBERSHIP. (a) A person who is assigned a  
6 membership interest in a limited liability company is entitled to:

7 (1) receive any allocation of income, gain, loss,  
8 deduction, credit, or a similar item that the assignor is entitled  
9 to receive to the extent the allocation of the item is assigned;

10 (2) receive any distribution the assignor is entitled  
11 to receive to the extent the distribution is assigned;

12 (3) require, for any proper purpose, reasonable  
13 information or a reasonable account of the transactions of the  
14 company; and

15 (4) make, for any proper purpose, reasonable  
16 inspections of the books and records of the company.

17 (b) An assignee of a membership interest in a limited  
18 liability company is entitled to become a member of the company on  
19 the approval of all of the company's members.

20 (c) An assignee of a membership interest in a limited  
21 liability company is not liable as a member of the company until the  
22 assignee becomes a member of the company. (TLLCA 4.05.A (part), C,  
23 4.07.A.)

24 Sec. 101.110. RIGHTS AND LIABILITIES OF ASSIGNEE OF  
25 MEMBERSHIP INTEREST AFTER BECOMING MEMBER. (a) An assignee of a  
26 membership interest in a limited liability company, after becoming  
27 a member of the company, is:

1           (1) entitled, to the extent assigned, to the same  
2 rights and powers granted or provided to a member of the company by  
3 the company agreement or this code;

4           (2) subject to the same restrictions and liabilities  
5 placed or imposed on a member of the company by the company  
6 agreement or this code; and

7           (3) except as provided by Subsection (b), liable for  
8 the assignor's obligation to make contributions to the company.

9           (b) An assignee of a membership interest in a limited  
10 liability company, after becoming a member of the company, is not  
11 obligated for a liability of the assignor that:

12           (1) the assignee did not have knowledge of on the date  
13 the assignee became a member of the company; and

14           (2) could not be ascertained from the company  
15 agreement. (TLLCA 4.07.B.)

16           Sec. 101.111. RIGHTS AND DUTIES OF ASSIGNOR OF MEMBERSHIP  
17 INTEREST. (a) An assignor of a membership interest in a limited  
18 liability company continues to be a member of the company and is  
19 entitled to exercise any unassigned rights or powers of a member of  
20 the company until the assignee becomes a member of the company.

21           (b) An assignor of a membership interest in a limited  
22 liability company is not released from the assignor's liability to  
23 the company, regardless of whether the assignee of the membership  
24 interest becomes a member of the company. (TLLCA 4.05.A (part),  
25 4.07.C.)

26           Sec. 101.112. JUDGMENT CREDITOR; CHARGE OF MEMBERSHIP  
27 INTEREST. (a) On application by a judgment creditor of a member of

1 a limited liability company or any other owner of a membership  
2 interest in a limited liability company, a court may charge the  
3 membership interest of the member or owner, as appropriate, with  
4 payment of the unsatisfied amount of the judgment.

5 (b) If a court charges a membership interest with payment of  
6 a judgment as provided by Subsection (a), the judgment creditor has  
7 only the rights of an assignee of the membership interest.

8 (c) This section may not be construed to deprive a member of  
9 a limited liability company or any other owner of a membership  
10 interest in a limited liability company of the benefit of any  
11 exemption laws applicable to the membership interest of the member  
12 or owner. (TLLCA 4.06.)

13 Sec. 101.113. PARTIES TO ACTIONS. A member of a limited  
14 liability company may be named as a party in an action by or against  
15 the limited liability company only if the action is brought to  
16 enforce the member's right against or liability to the company.  
17 (TLLCA 4.03.C.)

18 Sec. 101.114. LIABILITY FOR OBLIGATIONS. Except as and to  
19 the extent the company agreement specifically provides otherwise, a  
20 member or manager is not liable for a debt, obligation, or liability  
21 of a limited liability company, including a debt, obligation, or  
22 liability under a judgment, decree, or order of a court. (TLLCA  
23 4.03.A.)

24 [Sections 101.115-101.150 reserved for expansion]

25 SUBCHAPTER D. CONTRIBUTIONS

26 Sec. 101.151. REQUIREMENTS FOR ENFORCEABLE PROMISE. A  
27 promise to make a contribution or otherwise pay cash or transfer

1 property to a limited liability company is enforceable only if the  
2 promise is:

- 3 (1) in writing; and
- 4 (2) signed by the person making the promise. (TLLCA  
5 5.02.A.)

6 Sec. 101.152. ENFORCEABLE PROMISE NOT AFFECTED BY CHANGE IN  
7 CIRCUMSTANCES. A member of a limited liability company is obligated  
8 to perform an enforceable promise to make a contribution or  
9 otherwise pay cash or transfer property to the company without  
10 regard to the death, disability, or other change in circumstances  
11 of the member. (TLLCA 5.02.B (part).)

12 Sec. 101.153. FAILURE TO PERFORM ENFORCEABLE PROMISE;  
13 CONSEQUENCES. (a) A member of a limited liability company, or the  
14 member's legal representative or successor, who does not perform an  
15 enforceable promise to make a contribution, including a previously  
16 made contribution, or to otherwise pay cash or transfer property to  
17 the company, is obligated, at the request of the company, to pay in  
18 cash the agreed value of the contribution, as stated in the company  
19 agreement or the company's records required under Sections 3.151  
20 and 101.501, less:

- 21 (1) any amount already paid for the contribution; and
- 22 (2) the value of any property already transferred.

23 (b) The company agreement of a limited liability company may  
24 provide that the membership interest of a member who fails to  
25 perform an enforceable promise to make a payment of cash or transfer  
26 property to the company, whether as a contribution or in connection  
27 with a contribution already made, may be:

- 1           (1) reduced;
- 2           (2) subordinated to other membership interests of  
3 nondefaulting members;
- 4           (3) redeemed or sold at a value determined by  
5 appraisal or other formula; or
- 6           (4) made the subject of:
- 7                 (A) a forced sale;
- 8                 (B) forfeiture;
- 9                 (C) a loan from other members of the company in an  
10 amount necessary to satisfy the enforceable promise; or
- 11                 (D) another penalty or consequence.     (TLLCA  
12 5.02.B (part), C.)
- 13           Sec. 101.154. CONSENT REQUIRED TO RELEASE ENFORCEABLE  
14 OBLIGATION. The obligation of a member of a limited liability  
15 company, or of the member's legal representative or successor, to  
16 make a contribution or otherwise pay cash or transfer property to  
17 the company, or to return cash or property to the company paid or  
18 distributed to the member in violation of this code or the company  
19 agreement, may be released or settled only by consent of each member  
20 of the company. (TLLCA 5.02.D (part).)
- 21           Sec. 101.155. CREDITOR'S RIGHT TO ENFORCE CERTAIN  
22 OBLIGATIONS. A creditor of a limited liability company who extends  
23 credit or otherwise acts in reasonable reliance on an enforceable  
24 obligation of a member of the company that is released or settled as  
25 provided by Section 101.154 may enforce the original obligation if  
26 the obligation is stated in a document that is:
- 27                 (1) signed by the member; and

1           (2) not amended or canceled to evidence the release or  
2 settlement of the obligation. (TLLCA 5.02.D (part).)

3           Sec. 101.156. REQUIREMENTS TO ENFORCE CONDITIONAL  
4 OBLIGATION. (a) An obligation of a member of a limited liability  
5 company that is subject to a condition may be enforced by the  
6 company or a creditor described by Section 101.155 only if the  
7 condition is satisfied or waived by or with respect to the member.

8           (b) A conditional obligation of a member of a limited  
9 liability company under this section includes a contribution  
10 payable on a discretionary call of the limited liability company  
11 before the time the call occurs. (TLLCA 5.02.D (part).)

12           [Sections 101.157-101.200 reserved for expansion]

13           SUBCHAPTER E. ALLOCATIONS AND DISTRIBUTIONS

14           Sec. 101.201. ALLOCATION OF PROFITS AND LOSSES. The profits  
15 and losses of a limited liability company shall be allocated to each  
16 member of the company in accordance with the member's percentage or  
17 other interest in the company on the date of the allocation as  
18 stated in the company's records required under Sections 3.151 and  
19 101.501. (TLLCA 5.02-1.)

20           Sec. 101.202. DISTRIBUTION IN KIND. A member of a limited  
21 liability company is entitled to receive or demand a distribution  
22 from the company only in the form of cash, regardless of the form of  
23 the member's contribution to the company. (TLLCA 5.07.)

24           Sec. 101.203. SHARING OF DISTRIBUTIONS. Distributions of  
25 cash and other assets of a limited liability company shall be made  
26 to each member of the company according to the agreed value of the  
27 member's contribution to the company as stated in the company's

1 records required under Sections 3.151 and 101.501. (TLLCA 5.03.)

2           Sec. 101.204. INTERIM DISTRIBUTIONS. A member of a limited  
3 liability company, before the winding up of the company, is not  
4 entitled to receive and may not demand a distribution from the  
5 company until the company's governing authority declares a  
6 distribution to:

7                   (1) each member of the company; or

8                   (2) a class or group of members that includes the  
9 member. (TLLCA 5.04.)

10           Sec. 101.205. DISTRIBUTION ON WITHDRAWAL. A member of a  
11 limited liability company who validly exercises the member's right  
12 to withdraw from the company granted under the company agreement is  
13 entitled to receive, within a reasonable time after the date of  
14 withdrawal, the fair value of the member's interest in the company  
15 as determined as of the date of withdrawal. (TLLCA 5.06.)

16           Sec. 101.206. PROHIBITED DISTRIBUTION; DUTY TO RETURN. (a)  
17 A limited liability company may not make a distribution to a member  
18 of the company if, immediately after making the distribution, the  
19 company's total liabilities, other than liabilities described by  
20 Subsection (b), exceed the fair value of the company's total  
21 assets.

22                   (b) For purposes of Subsection (a), the liabilities of a  
23 limited liability company do not include:

24                           (1) a liability related to the member's membership  
25 interest; or

26                           (2) except as provided by Subsection (c), a liability  
27 for which the recourse of creditors is limited to specified



1 property of the company.

2 (c) For purposes of Subsection (a), the assets of a limited  
3 liability company include the fair value of property subject to a  
4 liability for which recourse of creditors is limited to specified  
5 property of the company only if the fair value of that property  
6 exceeds the liability.

7 (d) A member of a limited liability company who receives a  
8 distribution from the company in violation of this section is  
9 required to return the distribution to the company if the member had  
10 knowledge of the violation.

11 (e) This section may not be construed to affect the  
12 obligation of a member of a limited liability company to return a  
13 distribution to the company under the company agreement or other  
14 state or federal law. (TLLCA 5.09.)

15 Sec. 101.207. CREDITOR STATUS WITH RESPECT TO DISTRIBUTION.  
16 Subject to Sections 11.053 and 101.206, when a member of a limited  
17 liability company is entitled to receive a distribution from the  
18 company, the member, with respect to the distribution, has the same  
19 status as a creditor of the company and is entitled to any remedy  
20 available to a creditor of the company. (TLLCA 5.08.)

21 [Sections 101.208-101.250 reserved for expansion]

22 SUBCHAPTER F. MANAGEMENT

23 Sec. 101.251. MEMBERSHIP. The governing authority of a  
24 limited liability company consists of:

25 (1) the managers of the company, if the company's  
26 certificate of formation states that the company will have one or  
27 more managers; or

1           (2) the members of the company, if the company's  
2 certificate of formation states that the company will not have  
3 managers. (TLLCA 2.12 (part).)

4           , Sec. 101.252. MANAGEMENT BY GOVERNING AUTHORITY. The  
5 governing authority of a limited liability company shall manage the  
6 business and affairs of the company as provided by:

7           (1) the company agreement; and

8           (2) this title and the provisions of Title 1  
9 applicable to a limited liability company to the extent that the  
10 company agreement does not provide for the management of the  
11 company. (TLLCA 2.12.)

12           Sec. 101.253. DESIGNATION OF COMMITTEES; DELEGATION OF  
13 AUTHORITY. (a) The governing authority of a limited liability  
14 company by resolution may designate:

15           (1) one or more committees of the governing authority  
16 consisting of one or more governing persons of the company; and

17           (2) subject to any limitation imposed by the governing  
18 authority, a governing person to serve as an alternate member of a  
19 committee designated under Subdivision (1) at a committee meeting  
20 from which a member of the committee is absent or disqualified.

21           (b) A committee of the governing authority of a limited  
22 liability company may exercise the authority of the governing  
23 authority as provided by the resolution designating the committee.

24           (c) The designation of a committee under this section does  
25 not relieve the governing authority of any responsibility imposed  
26 by law. (TLLCA 2.12 (part), 2.18.A, C.)

27           Sec. 101.254. DESIGNATION OF AGENTS; BINDING ACTS. (a)

1 Except as provided by this title and Title 1, each governing person  
2 of a limited liability company and each officer or agent of a  
3 limited liability company vested with actual or apparent authority  
4 by the governing authority of the company is an agent of the company  
5 for purposes of carrying out the company's business.

6 (b) An act committed by an agent of a limited liability  
7 company described by Subsection (a) for the purpose of apparently  
8 carrying out the ordinary course of business of the company,  
9 including the execution of an instrument, document, mortgage, or  
10 conveyance in the name of the company, binds the company unless:

11 (1) the agent does not have actual authority to act for  
12 the company; and

13 (2) the person with whom the agent is dealing has  
14 knowledge of the agent's lack of actual authority.

15 (c) An act committed by an agent of a limited liability  
16 company described by Subsection (a) that is not apparently for  
17 carrying out the ordinary course of business of the company binds  
18 the company only if the act is authorized in accordance with this  
19 title. (TLLCA 2.11, 2.21.C, D.)

20 Sec. 101.255. CONTRACTS OR TRANSACTIONS INVOLVING  
21 INTERESTED GOVERNING PERSONS OR OFFICERS. (a) This section applies  
22 only to a contract or transaction between a limited liability  
23 company and:

24 (1) one or more of the company's governing persons or  
25 officers; or

26 (2) an entity or other organization in which one or  
27 more of the company's governing persons or officers:

1 (A) is a managerial official; or

2 (B) has a financial interest.

3 (b) An otherwise valid contract or transaction is valid  
4 notwithstanding that a governing person or officer of the company  
5 is present at or participates in the meeting of the governing  
6 authority, or of a committee of the governing person's authority,  
7 that authorizes the contract or transaction or votes to authorize  
8 the contract or transaction, if:

9 (1) the material facts as to the relationship or  
10 interest and as to the contract or transaction are disclosed to or  
11 known by:

12 (A) the company's governing authority or a  
13 committee of the governing authority and the governing authority or  
14 committee in good faith authorizes the contract or transaction by  
15 the affirmative vote of the majority of the disinterested governing  
16 persons or committee members, regardless of whether the  
17 disinterested governing persons or committee members constitute a  
18 quorum; or

19 (B) the members of the company, and the members  
20 in good faith approve the contract or transaction by vote of the  
21 members; or

22 (2) the contract or transaction is fair to the company  
23 when the contract or transaction is authorized, approved, or  
24 ratified by the governing authority, a committee of the governing  
25 authority, or the members of the company.

26 (c) Common or interested governing persons of a limited  
27 liability company may be included in determining the presence of a

1 quorum at a meeting of the company's governing authority or of a  
2 committee of the governing authority that authorizes the contract  
3 or transaction. (TLLCA 2.12.A (part), 2.17.)

4 [Sections 101.256-101.300 reserved for expansion]

5 SUBCHAPTER G. MANAGERS

6 Sec. 101.301. APPLICABILITY OF SUBCHAPTER. This subchapter  
7 applies only to a limited liability company that has one or more  
8 managers. (New.)

9 Sec. 101.302. NUMBER AND QUALIFICATIONS. (a) The managers  
10 of a limited liability company may consist of one or more persons.

11 (b) Except as provided by Subsection (c), the number of  
12 managers of a limited liability company consists of the number of  
13 initial managers listed in the company's certificate of formation.

14 (c) The number of managers of a limited liability company  
15 may be increased or decreased by amendment to, or as provided by,  
16 the company agreement, except that a decrease in the number of  
17 managers may not shorten the term of an incumbent manager.

18 (d) A manager of a limited liability company is not required  
19 to be a:

20 (1) resident of this state; or

21 (2) member of the company. (TLLCA 2.12 (part), 2.13  
22 (part).)

23 Sec. 101.303. TERM. A manager of a limited liability  
24 company serves:

25 (1) for the term, if any, for which the manager is  
26 elected and until the manager's successor is elected; or

27 (2) until the earlier resignation, removal, or death

1 of the manager. (TLLCA 2.13 (part).)

2       Sec. 101.304. REMOVAL. Subject to Section 101.306(a), a  
3 manager of a limited liability company may be removed, with or  
4 without cause, at a meeting of the company's members called for that  
5 purpose. (TLLCA 2.13 (part).)

6       Sec. 101.305. MANAGER VACANCY. (a) Subject to Section  
7 101.306(b), a vacancy in the position of a manager of a limited  
8 liability company may be filled by:

9           (1) the affirmative vote of the majority of the  
10 remaining managers of the company, without regard to whether the  
11 remaining managers constitute a quorum; or

12           (2) if the vacancy is a result of an increase in the  
13 number of managers, an election at an annual or special meeting of  
14 the company's members called for that purpose.

15       (b) A person elected to fill a vacancy in the position of a  
16 manager serves for the unexpired term of the person's predecessor.  
17 (TLLCA 2.15.A, B.)

18       Sec. 101.306. REMOVAL AND REPLACEMENT OF MANAGER ELECTED BY  
19 CLASS OR GROUP. (a) If a class or group of the members of a limited  
20 liability company is entitled by the company agreement of the  
21 company to elect one or more managers of the company, a manager may  
22 be removed from office only by the class or group that elected the  
23 manager.

24       (b) A vacancy in the position of a manager elected as  
25 provided by Subsection (a) may be filled only by:

26           (1) a majority vote of the managers serving on the date  
27 the vacancy occurs who were elected by the class or group of

1 members; or

2 (2) a majority vote of the members of the class or  
3 group. (TLLCA 2.13 (part), 2.15.C.)

4 Sec. 101.307. METHODS OF CLASSIFYING MANAGERS. Other  
5 methods of classifying managers of a limited liability company,  
6 including providing for managers who serve for staggered terms of  
7 office or terms that are not uniform, may be established in the  
8 company agreement. (TLLCA 2.14.)

9 [Sections 101.308-101.350 reserved for expansion]

10 SUBCHAPTER H. MEETINGS AND VOTING

11 Sec. 101.351. APPLICABILITY OF SUBCHAPTER. This subchapter  
12 applies only to a meeting of and voting by:

13 (1) the governing authority of a limited liability  
14 company;

15 (2) the members of a limited liability company if the  
16 members do not constitute the governing authority of the company;  
17 and

18 (3) a committee of the governing authority of a  
19 limited liability company. (TLLCA 2.12.A (part).)

20 Sec. 101.352. GENERAL NOTICE REQUIREMENTS. (a) Except as  
21 provided by Subsection (b), notice of a regular or special meeting  
22 of the governing authority or members of a limited liability  
23 company, or a committee of the company's governing authority, shall  
24 be given in writing to each governing person, member, or committee  
25 member, as appropriate, and as provided by Section 6.051.

26 (b) If the members of a limited liability company do not  
27 constitute the governing authority of the company, notice required

1 by Subsection (a) shall be given by or at the direction of the  
2 governing authority not later than the 10th day or earlier than the  
3 60th day before the date of the meeting. Notice of a meeting  
4 required under this subsection must state the business to be  
5 transacted at the meeting or the purpose of the meeting if:

6 (1) the meeting is a special meeting; or

7 (2) a purpose of the meeting is to consider a matter  
8 described by Section 101.356. (TLLCA 2.12.A (part), 2.19.B, C, D.)

9 Sec. 101.353. QUORUM. A majority of all of the governing  
10 persons, members, or committee members of a limited liability  
11 company constitutes a quorum for the purpose of transacting  
12 business at a meeting of the governing authority, members, or  
13 committee of the company, as appropriate. (TLLCA 2.23.A (part).)

14 Sec. 101.354. EQUAL VOTING RIGHTS. Each governing person,  
15 member, or committee member of a limited liability company has an  
16 equal vote at a meeting of the governing authority, members, or  
17 committee of the company, as appropriate. (TLLCA 2.23.F.)

18 Sec. 101.355. ACT OF GOVERNING AUTHORITY, MEMBERS, OR  
19 COMMITTEE. Except as provided by this title or Title 1, the  
20 affirmative vote of the majority of the governing persons, members,  
21 or committee members of a limited liability company present at a  
22 meeting at which a quorum is present constitutes an act of the  
23 governing authority, members, or committee of the company, as  
24 appropriate. (TLLCA 2.23.A (part), F.)

25 Sec. 101.356. VOTES REQUIRED TO APPROVE CERTAIN ACTIONS.  
26 (a) Except as provided in this section or any other section in this  
27 title, an action of a limited liability company may be approved by



1 the company's governing authority as provided by Section 101.355.

2 (b) Except as provided by Subsection (c), (d), or (e) or any  
3 other section in this title, an action of a limited liability  
4 company not apparently for carrying out the ordinary course of  
5 business of the company must be approved by the affirmative vote of  
6 the majority of all of the company's governing persons.

7 (c) Except as provided by Subsection (d) or (e) or any other  
8 section in this title, a fundamental business transaction of a  
9 limited liability company, or an action that would make it  
10 impossible for a limited liability company to carry out the  
11 ordinary business of the company, must be approved by the  
12 affirmative vote of the majority of all of the company's members.

13 (d) Except as provided by Subsection (e) or any other  
14 section of this title, an amendment to the certificate of formation  
15 of a limited liability company must be approved by the affirmative  
16 vote of all of the company's members.

17 (e) A requirement that an action of a limited liability  
18 company must be approved by the company's members does not apply  
19 during the period prescribed by Section 101.101(b). (TLLCA 2.23.D,  
20 E, G, H.)

21 Sec. 101.357. MANNER OF VOTING. (a) A member of a limited  
22 liability company may vote:

23 (1) in person; or

24 (2) by a proxy executed in writing by the member.

25 (b) A manager or committee member of a limited liability  
26 company, if authorized by the company agreement, may vote:

27 (1) in person; or

1           (2) by a proxy executed in writing by the manager or  
2 committee member, as appropriate. (TLLCA 2.23.A (part); New.)

3           Sec. 101.358. ACTION BY LESS THAN UNANIMOUS WRITTEN  
4 CONSENT. (a) This section applies only to an action required or  
5 authorized to be taken at an annual or special meeting of the  
6 governing authority, the members, or a committee of the governing  
7 authority of a limited liability company under this title, Title 1,  
8 or the governing documents of the company.

9           (b) Notwithstanding Sections 6.201 and 6.202, an action may  
10 be taken without holding a meeting, providing notice, or taking a  
11 vote if a written consent or consents stating the action to be taken  
12 is signed by the number of governing persons, members, or committee  
13 members of a limited liability company, as appropriate, necessary  
14 to have at least the minimum number of votes that would be necessary  
15 to take the action at a meeting at which each governing person,  
16 member, or committee member, as appropriate, entitled to vote on  
17 the action is present and votes. (TLLCA 2.23.B(1).)

18           [Sections 101.359-101.400 reserved for expansion]

19           SUBCHAPTER I. MODIFICATION OF DUTIES; INDEMNIFICATION

20           Sec. 101.401. EXPANSION OR RESTRICTION OF DUTIES AND  
21 LIABILITIES. The company agreement of a limited liability company  
22 may expand or restrict any duties, including fiduciary duties, and  
23 related liabilities that a member, manager, officer, or other  
24 person has to the company or to a member or manager of the company.  
25 (TLLCA 2.20.B.)

26           Sec. 101.402. PERMISSIVE INDEMNIFICATION, ADVANCEMENT OF  
27 EXPENSES, AND INSURANCE OR OTHER ARRANGEMENTS. (a) A limited

1 liability company may:

2 (1) indemnify a person;

3 (2) pay in advance or reimburse expenses incurred by a  
4 person; and

5 (3) purchase or procure or establish and maintain  
6 insurance or another arrangement to indemnify or hold harmless a  
7 person.

8 (b) In this section, "person" includes a member, manager, or  
9 officer of a limited liability company or an assignee of a  
10 membership interest in the company. (TLLCA 2.02.A, 2.20.A.)

11 [Sections 101.403-101.450 reserved for expansion]

12 SUBCHAPTER J. DERIVATIVE PROCEEDINGS

13 Sec. 101.451. DEFINITIONS. In this subchapter:

14 (1) "Derivative proceeding" means a civil suit in the  
15 right of a domestic limited liability company or, to the extent  
16 provided by Section 101.462, in the right of a foreign limited  
17 liability company.

18 (2) "Member" includes a person who beneficially owns a  
19 membership interest through a voting trust or a nominee on the  
20 person's behalf. (TLLCA 8.12.A, C; TBCA 5.14.A.)

21 Sec. 101.452. STANDING TO BRING PROCEEDING. A member may  
22 not institute or maintain a derivative proceeding unless:

23 (1) the member:

24 (A) was a member of the limited liability company  
25 at the time of the act or omission complained of; or

26 (B) became a member by operation of law from a  
27 person that was a member at the time of the act or omission

1 complained of; and

2 (2) the member fairly and adequately represents the  
3 interests of the limited liability company in enforcing the right  
4 of the limited liability company. (TLLCA 8.12.A, C; TBCA 5.14.B.)

5 Sec. 101.453. DEMAND. (a) A member may not institute a  
6 derivative proceeding until the 91st day after the date a written  
7 demand is filed with the limited liability company stating with  
8 particularity the act, omission, or other matter that is the  
9 subject of the claim or challenge and requesting that the limited  
10 liability company take suitable action.

11 (b) The waiting period required by Subsection (a) before a  
12 derivative proceeding may be instituted is not required if:

13 (1) the member has been previously notified that the  
14 demand has been rejected by the limited liability company;

15 (2) the limited liability company is suffering  
16 irreparable injury; or

17 (3) irreparable injury to the limited liability  
18 company would result by waiting for the expiration of the 90-day  
19 period. (TLLCA 8.12.A, C; TBCA 5.14.C.)

20 Sec. 101.454. DETERMINATION BY GOVERNING OR INDEPENDENT  
21 PERSONS. (a) The determination of how to proceed on allegations  
22 made in a demand or petition relating to a derivative proceeding  
23 must be made by an affirmative vote of the majority of:

24 (1) the independent and disinterested governing  
25 persons present at a meeting of the governing authority at which  
26 interested governing persons are not present at the time of the vote  
27 if the independent and disinterested governing persons constitute a

1 quorum of the governing authority;

2 (2) a committee consisting of two or more independent  
3 and disinterested governing persons appointed by the majority of  
4 one or more independent and disinterested governing persons present  
5 at a meeting of the governing authority, regardless of whether the  
6 independent and disinterested governing persons constitute a  
7 quorum of the governing authority; or

8 (3) a panel of one or more independent and  
9 disinterested persons appointed by the court on a motion by the  
10 limited liability company listing the names of the persons to be  
11 appointed and stating that, to the best of the limited liability  
12 company's knowledge, the persons to be appointed are disinterested  
13 and qualified to make the determinations contemplated by Section  
14 101.458.

15 (b) The court shall appoint a panel under Subsection (a)(3)  
16 if the court finds that the persons recommended by the limited  
17 liability company are independent and disinterested and are  
18 otherwise qualified with respect to expertise, experience,  
19 independent judgment, and other factors considered appropriate by  
20 the court under the circumstances to make the determinations. A  
21 person appointed by the court to a panel under this section may not  
22 be held liable to the limited liability company or the limited  
23 liability company's members for an action taken or omission made by  
24 the person in that capacity, except for acts or omissions  
25 constituting fraud or wilful misconduct. (TLLCA 8.12.A, C; TBCA  
26 5.14.H.)

27 Sec. 101.455. STAY OF PROCEEDING. (a) If the domestic or

1 foreign limited liability company that is the subject of a  
2 derivative proceeding commences an inquiry into the allegations  
3 made in a demand or petition and the person or group of persons  
4 described by Section 101.454 is conducting an active review of the  
5 allegations in good faith, the court shall stay a derivative  
6 proceeding until the review is completed and a determination is  
7 made by the person or group regarding what further action, if any,  
8 should be taken.

9 (b) To obtain a stay, the domestic or foreign limited  
10 liability company shall provide the court with a written statement  
11 agreeing to advise the court and the member making the demand of the  
12 determination promptly on the completion of the review of the  
13 matter. A stay, on motion, may be reviewed every 60 days for the  
14 continued necessity of the stay.

15 (c) If the review and determination made by the person or  
16 group is not completed before the 61st day after the date on which  
17 the court orders the stay, the stay may be renewed for one or more  
18 additional 60-day periods if the domestic or foreign limited  
19 liability company provides the court and the member with a written  
20 statement of the status of the review and the reasons why a  
21 continued extension of the stay is necessary. (TLLCA 8.12.A, C;  
22 TBCA 5.14.D(1).)

23 Sec. 101.456. DISCOVERY. (a) If a domestic or foreign  
24 limited liability company proposes to dismiss a derivative  
25 proceeding under Section 101.458, discovery by a member after the  
26 filing of the derivative proceeding in accordance with this  
27 subchapter shall be limited to:

1 (1) facts relating to whether the person or group of  
2 persons described by Section 101.458 is independent and  
3 disinterested;

4 (2) the good faith of the inquiry and review by the  
5 person or group; and

6 (3) the reasonableness of the procedures followed by  
7 the person or group in conducting the review.

8 (b) Discovery described by Subsection (a) may not be  
9 expanded to include a fact or substantive matter regarding the act,  
10 omission, or other matter that is the subject matter of the  
11 derivative proceeding. The scope of discovery may be expanded if  
12 the court determines after notice and hearing that a good faith  
13 review of the allegations for purposes of Section 101.458 has not  
14 been made by an independent and disinterested person or group in  
15 accordance with that section. (TLLCA 8.12.A, C; TBCA 5.14.D(2).)

16 Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written  
17 demand filed with the limited liability company under Section  
18 101.453 tolls the statute of limitations on the claim on which  
19 demand is made until the earlier of:

20 (1) the 91st day after the date of the demand; or

21 (2) the 31st day after the date the limited liability  
22 company advises the member that the demand has been rejected or the  
23 review has been completed. (TLLCA 8.12.A, C; TBCA 5.14.E.)

24 Sec. 101.458. DISMISSAL OF DERIVATIVE PROCEEDING. (a) A  
25 court shall dismiss a derivative proceeding on a motion by the  
26 limited liability company if the person or group of persons  
27 described by Section 101.454 determines in good faith, after

1 conducting a reasonable inquiry and based on factors the person or  
2 group considers appropriate under the circumstances, that  
3 continuation of the derivative proceeding is not in the best  
4 interests of the limited liability company.

5 (b) In determining whether the requirements of Subsection  
6 (a) have been met, the burden of proof shall be on:

7 (1) the plaintiff member if:

8 (A) the majority of the governing authority  
9 consists of independent and disinterested persons at the time the  
10 determination is made;

11 (B) the determination is made by a panel of one or  
12 more independent and disinterested persons appointed under Section  
13 101.454(a)(3); or

14 (C) the limited liability company presents prima  
15 facie evidence that demonstrates that the persons appointed under  
16 Section 101.454(a)(2) are independent and disinterested; or

17 (2) the limited liability company in any other  
18 circumstance. (TLLCA 8.12.A, C; TBCA 5.14.F.)

19 Sec. 101.459. ALLEGATIONS IF DEMAND REJECTED. If a  
20 derivative proceeding is instituted after a demand is rejected, the  
21 petition must allege with particularity facts that establish that  
22 the rejection was not made in accordance with the requirements of  
23 Sections 101.454 and 101.458. (TLLCA 8.12.A, C; TBCA 5.14.G.)

24 Sec. 101.460. DISCONTINUANCE OR SETTLEMENT. (a) A  
25 derivative proceeding may not be discontinued or settled without  
26 court approval.

27 (b) The court shall direct that notice be given to the



1 affected members if the court determines that a proposed  
2 discontinuance or settlement may substantially affect the  
3 interests of other members. (TLLCA 8.12.A, C; TBCA 5.14.I.)

4 Sec. 101.461. PAYMENT OF EXPENSES. (a) In this section,  
5 "expenses" means reasonable expenses incurred by a party in a  
6 derivative proceeding, including:

7 (1) attorney's fees;

8 (2) costs of pursuing an investigation of the matter  
9 that was the subject of the derivative proceeding; or

10 (3) expenses for which the domestic or foreign limited  
11 liability company may be required to indemnify another person.

12 (b) On termination of a derivative proceeding, the court may  
13 order:

14 (1) the domestic or foreign limited liability company  
15 to pay the expenses the plaintiff incurred in the proceeding if the  
16 court finds the proceeding has resulted in a substantial benefit to  
17 the domestic or foreign limited liability company;

18 (2) the plaintiff to pay the expenses the domestic or  
19 foreign limited liability company or other defendant incurred in  
20 investigating and defending the proceeding if the court finds the  
21 proceeding has been instituted or maintained without reasonable  
22 cause or for an improper purpose; or

23 (3) a party to pay the expenses incurred by another  
24 party relating to the filing of a pleading, motion, or other paper  
25 if the court finds the pleading, motion, or other paper:

26 (A) was not well grounded in fact after  
27 reasonable inquiry;

1 (B) was not warranted by existing law or a good  
2 faith argument for the extension, modification, or reversal of  
3 existing law; or

4 (C) was interposed for an improper purpose, such  
5 as to harass, cause unnecessary delay, or cause a needless increase  
6 in the cost of litigation. (TLLCA 8.12.A, C; TBCA 5.14.J.)

7 Sec. 101.462. APPLICATION TO FOREIGN LIMITED LIABILITY  
8 COMPANIES. (a) In a derivative proceeding brought in the right of a  
9 foreign limited liability company, the matters covered by this  
10 subchapter are governed by the laws of the jurisdiction of  
11 organization of the foreign limited liability company, except for  
12 Sections 101.455, 101.460, and 101.461, which are procedural  
13 provisions and do not relate to the internal affairs of the foreign  
14 limited liability company.

15 (b) In the case of matters relating to a foreign limited  
16 liability company under Section 101.454, a reference to a person or  
17 group of persons described by that section refers to a person or  
18 group entitled under the laws of the jurisdiction of organization  
19 of the foreign limited liability company to review and dispose of a  
20 derivative proceeding. The standard of review of a decision made by  
21 the person or group to dismiss the derivative proceeding shall be  
22 governed by the laws of the jurisdiction of organization of the  
23 foreign limited liability company. (TLLCA 8.12.A, C; TBCA 5.14.K.)

24 Sec. 101.463. CLOSELY HELD LIMITED LIABILITY COMPANY. (a)  
25 In this section, "closely held limited liability company" means a  
26 limited liability company that has:

27 (1) fewer than 35 members; and

1           (2) no membership interests listed on a national  
2 securities exchange or regularly quoted in an over-the-counter  
3 market by one or more members of a national securities association.

4           (b) Subject to Subsection (c), Sections 101.452-101.459 do  
5 not apply to a closely held limited liability company.

6           (c) If justice requires:

7           (1) a derivative proceeding brought by a member of a  
8 closely held limited liability company may be treated by a court as  
9 a direct action brought by the member for the member's own benefit;  
10 and

11           (2) a recovery in a direct or derivative proceeding by  
12 a member may be paid directly to the plaintiff or to the limited  
13 liability company if necessary to protect the interests of  
14 creditors or other members of the limited liability company.  
15 (TLLCA 8.12.A, C; TBCA 5.14.L.)

16           [Sections 101.464-101.500 reserved for expansion]

17           SUBCHAPTER K. SUPPLEMENTAL RECORDKEEPING REQUIREMENTS

18           Sec. 101.501. SUPPLEMENTAL RECORDS REQUIRED FOR LIMITED  
19 LIABILITY COMPANIES. (a) In addition to the books and records  
20 required to be kept under Section 3.151, a limited liability  
21 company shall keep at its principal office in the United States, or  
22 make available to a person at its principal office in the United  
23 States not later than the fifth day after the date the person  
24 submits a written request to examine the books and records of the  
25 company under Section 3.152(a) or 101.502:

26           (1) a current list of each member of a class or group  
27 of membership interests in the company;

1           (2) a copy of the company's federal, state, and local  
2 tax information or income tax returns for each of the six preceding  
3 tax years;

4           (3) a copy of the company's certificate of formation,  
5 including any amendments to or restatements of the certificate of  
6 formation;

7           (4) if the company agreement is in writing, a copy of  
8 the company agreement, including any amendments to or restatements  
9 of the company agreement;

10          (5) an executed copy of any powers of attorney;

11          (6) a copy of any document that establishes a class or  
12 group of members of the company as provided by the company  
13 agreement; and

14          (7) except as provided by Subsection (b), a written  
15 statement of:

16               (A) the amount of a cash contribution and a  
17 description and statement of the agreed value of any other  
18 contribution made or agreed to be made by each member;

19               (B) the dates any additional contributions are to  
20 be made by a member;

21               (C) any event the occurrence of which requires a  
22 member to make additional contributions;

23               (D) any event the occurrence of which requires  
24 the winding up of the company; and

25               (E) the date each member became a member of the  
26 company.

27          (b) A limited liability company is not required to keep or

1 make available at its principal office in the United States a  
2 written statement of the information required by Subsection (a)(7)  
3 if that information is stated in the company agreement.

4 (c) A limited liability company shall keep at its registered  
5 office located in this state and make available to a member of the  
6 company on reasonable request the street address of the company's  
7 principal office in the United States in which the records required  
8 by this section and Section 3.151 are maintained or made available.  
9 (TLLCA 2.22.A, C.)

10 Sec. 101.502. RIGHT TO EXAMINE RECORDS AND CERTAIN OTHER  
11 INFORMATION. (a) A member of a limited liability company or an  
12 assignee of a membership interest in a limited liability company,  
13 or a representative of the member or assignee, on written request  
14 and for a proper purpose, may examine and copy at any reasonable  
15 time and at the member's or assignee's expense:

16 (1) records required under Sections 3.151 and 101.501;  
17 and

18 (2) other information regarding the business,  
19 affairs, and financial condition of the company that is reasonable  
20 for the person to examine and copy.

21 (b) A limited liability company shall provide to a member of  
22 the company or an assignee of a membership interest in the company,  
23 on written request by the member or assignee sent to the company's  
24 principal office in the United States or, if different, the person  
25 and address designated in the company agreement, a free copy of:

26 (1) the company's certificate of formation, including  
27 any amendments to or restatements of the certificate of formation;

1           (2) if in writing, the company agreement, including  
2 any amendments to or restatements of the company agreement; and

3           (3) any tax returns described by Section  
4 101.501(a)(2). (TLLCA 2.22.D, E.)

5           [Sections 101.503-101.550 reserved for expansion]

6                   SUBCHAPTER L. SUPPLEMENTAL WINDING UP

7                           AND TERMINATION PROVISIONS

8           Sec. 101.551. PERSONS ELIGIBLE TO WIND UP COMPANY. After an  
9 event requiring the winding up of a limited liability company  
10 unless a revocation as provided by Section 11.151 or a cancellation  
11 as provided by Section 11.152 occurs, the winding up of the company  
12 must be carried out by:

13                   (1) the company's governing authority or one or more  
14 persons, including a governing person, designated by the governing  
15 authority, the members, or the governing documents;

16                   (2) if the event requiring the winding up of the  
17 company is the termination of the continued membership of the last  
18 remaining member of the company, the legal representative or  
19 successor of the last remaining member or one or more persons  
20 designated by the legal representative or successor; or

21                   (3) a person appointed by the court to carry out the  
22 winding up of the company under Section 11.054, 11.405, 11.409, or  
23 11.410. (TLLCA 6.03.)

24           Sec. 101.552. APPROVAL OF VOLUNTARY WINDING UP, REVOCATION,  
25 CANCELLATION, OR REINSTATEMENT. A majority vote of all of the  
26 governing members of a limited liability company or, if the limited  
27 liability company has no members, a majority vote of all of the

1 managers of the company is required to approve:

2 (1) a voluntary winding up of the company under  
3 Chapter 11;

4 (2) a revocation of a voluntary decision to wind up the  
5 company under Section 11.151;

6 (3) a cancellation of an event requiring the winding  
7 up of the company under Section 11.152; or

8 (4) a reinstatement of a terminated company under  
9 Section 11.202. (TLLCA 6.01, 6.06.)

10 TITLE 4. PARTNERSHIPS

11 CHAPTER 151. GENERAL PROVISIONS

12 Sec. 151.001. DEFINITIONS. In this title:

13 (1) "Capital account" means the amount computed by:

14 (A) adding the amount of a partner's original and  
15 additional contributions of cash to a partnership, the agreed value  
16 of any other property that that partner originally or additionally  
17 contributed to the partnership, and allocations of partnership  
18 profits to that partner; and

19 (B) subtracting the amount of distributions to  
20 that partner and allocations of partnership losses to that partner.

21 (2) "Foreign limited partnership" means a partnership  
22 formed under the laws of another state that has one or more general  
23 partners and one or more limited partners.

24 (3) "Majority-in-interest," with respect to all or a  
25 specified group of partners, means partners who own more than 50  
26 percent of the current percentage or other interest in the profits  
27 of the partnership that is owned by all of the partners or by the

1 partners in the specified group, as appropriate.

2 (4) "Partnership agreement" means any agreement,  
3 written or oral, of the partners concerning a partnership. (TRLPA  
4 1.02(1), (3), (7), (10); TRPA 1.01(2), (8), (10), (12).)

5 Sec. 151.002. KNOWLEDGE OF FACT. For purposes of this  
6 title, a person has knowledge of a fact only if the person has  
7 actual knowledge of the fact. (TRPA 1.02(a).)

8 Sec. 151.003. NOTICE OF FACT. (a) For purposes of this  
9 title, a person has notice of a fact if the person:

10 (1) has knowledge of the fact;

11 (2) has received a communication of the fact as  
12 provided by Subsection (c); or

13 (3) reasonably should have concluded, from all facts  
14 then known to that person, that the fact exists.

15 (b) A person notifies or gives notice to another person of a  
16 fact by taking actions reasonably required to inform the other  
17 person of the fact in the ordinary course of business, regardless of  
18 whether the other person actually has knowledge of the fact.

19 (c) A person is notified or receives notice of a fact when  
20 the fact is communicated to:

21 (1) the person;

22 (2) the person's place of business; or

23 (3) another place held out by the person as the place  
24 for receipt of communications.

25 (d) Receipt of notice by a partner of a fact relating to the  
26 partnership is effective immediately as notice to the partnership  
27 unless fraud against the partnership is committed by or with the



1 consent of the partner receiving the notice. (TRPA 1.02(b), (c),  
2 (d), (e).)

3 CHAPTER 152. GENERAL PARTNERSHIPS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 152.001. DEFINITIONS. In this chapter:

6 (1) "Event of withdrawal" or "withdrawal" means an  
7 event specified by Section 152.501(b).

8 (2) "Event requiring a winding up" means an event  
9 specified by Section 11.051 or 11.057.

10 (3) "Foreign limited liability partnership" means a  
11 partnership that:

12 (A) is foreign; and

13 (B) has the status of a limited liability  
14 partnership pursuant to the laws of the jurisdiction of formation.

15 (4) "Other partnership provisions" means the  
16 provisions of Chapters 151 and 154 and Title 1 to the extent  
17 applicable to partnerships.

18 (5) "Transfer" includes:

19 (A) an assignment;

20 (B) a conveyance;

21 (C) a lease;

22 (D) a mortgage;

23 (E) a deed;

24 (F) an encumbrance; and

25 (G) the creation of a security interest.

26 (6) "Withdrawn partner" means a partner with respect  
27 to whom an event of withdrawal has occurred. (TRPA 1.01(6), (7),

1 (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18),  
2 (19).)

3 Sec. 152.002. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE  
4 AND VARIABLE PROVISIONS. (a) Except as provided by Subsection (b),  
5 a partnership agreement governs the relations of the partners and  
6 between the partners and the partnership. To the extent that the  
7 partnership agreement does not otherwise provide, this chapter and  
8 the other partnership provisions govern the relationship of the  
9 partners and between the partners and the partnership.

10 (b) A partnership agreement or the partners may not:

11 (1) unreasonably restrict a partner's right of access  
12 to books and records under Section 152.212;

13 (2) eliminate the duty of loyalty under Section  
14 152.205, except that the partners by agreement may identify  
15 specific types of activities or categories of activities that do  
16 not violate the duty of loyalty if the types or categories are not  
17 manifestly unreasonable;

18 (3) eliminate the duty of care under Section 152.206,  
19 except that the partners by agreement may determine the standards  
20 by which the performance of the obligation is to be measured if the  
21 standards are not manifestly unreasonable;

22 (4) eliminate the obligation of good faith under  
23 Section 152.204(b), except that the partners by agreement may  
24 determine the standards by which the performance of the obligation  
25 is to be measured if the standards are not manifestly unreasonable;

26 (5) vary the power to withdraw as a partner under  
27 Section 152.501(b)(1), (7), or (8), except for the requirement that

1 notice be in writing;

2 (6) vary the right to expel a partner by a court in an  
3 event specified by Section 152.501(b)(5);

4 (7) restrict rights of a third party under this  
5 chapter or the other partnership provisions, except for a  
6 limitation on an individual partner's liability in a limited  
7 liability partnership as provided by this chapter;

8 (8) select a governing law not permitted under  
9 Sections 1.103 and 1.002(43)(C); or

10 (9) except as provided in Subsections (c) and (d),  
11 waive or modify the following provisions of Title 1:

12 (A) Chapter 1, if the provision is used to  
13 interpret a provision or to define a word or phrase contained in a  
14 section listed in this subsection;

15 (B) Chapter 2, other than Sections 2.104(c)(2),  
16 2.104(c)(3), and 2.113;

17 (C) Chapter 3, other than Subchapters C and E of  
18 that chapter; or

19 (D) Chapters 4, 5, 10, 11, and 12, other than  
20 Sections 11.057(a)(1), (2), (5), and (6) and 11.057(b).

21 (c) A provision listed in Subsection (b)(9) may be waived or  
22 modified in a partnership agreement if the provision that is waived  
23 or modified authorizes the partnership to waive or modify the  
24 provision in the partnership's governing documents.

25 (d) A provision listed in Subsection (b)(9) may be waived or  
26 modified in a partnership agreement if the provision that is  
27 modified specifies:

1           (1) the person or group of persons entitled to approve  
2 a modification; or

3           (2) the vote or other method by which a modification is  
4 required to be approved. (TRPA 1.03.)

5           Sec. 152.003. SUPPLEMENTAL PRINCIPLES OF LAW. The  
6 principles of law and equity and the other partnership provisions  
7 supplement this chapter unless otherwise provided by this chapter  
8 or the other partnership provisions. (TRPA 1.04(a).)

9           Sec. 152.004. RULE OF STATUTORY CONSTRUCTION NOT  
10 APPLICABLE. The rule that a statute in derogation of the common law  
11 is to be strictly construed does not apply to this chapter or the  
12 other partnership provisions. (TRPA 1.04(b).)

13          Sec. 152.005. APPLICABLE INTEREST RATE. If an obligation to  
14 pay interest arises under this chapter and the rate is not  
15 specified, the interest rate is the rate specified by Section  
16 302.002, Finance Code. (TRPA 1.04(c).)

17           [Sections 152.006-152.050 reserved for expansion]

18           SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

19          Sec. 152.051. PARTNERSHIP DEFINED. (a) In this section,  
20 "association" does not have the meaning of the term "association"  
21 under Section 1.002.

22           (b) Except as provided by Subsection (c) and Section  
23 152.053(a), an association of two or more persons to carry on a  
24 business for profit as owners creates a partnership, regardless of  
25 whether:

26           (1) the persons intend to create a partnership; or

27           (2) the association is called a "partnership," "joint

1 venture," or other name.

2 (c) An association or organization is not a partnership if  
3 it was created under a statute other than:

4 (1) this title and the provisions of Title 1  
5 applicable to partnerships and limited partnerships;

6 (2) a predecessor to a statute referred to in  
7 Subdivision (1); or

8 (3) a comparable statute of another jurisdiction.

9 (d) The provisions of this chapter govern limited  
10 partnerships only to the extent provided by Sections 153.003 and  
11 153.152 and Subchapter H, Chapter 153. (TRPA 2.02(a), (b).)

12 Sec. 152.052. RULES FOR DETERMINING IF PARTNERSHIP IS  
13 CREATED. (a) Factors indicating that persons have created a  
14 partnership include the persons':

15 (1) receipt or right to receive a share of profits of  
16 the business;

17 (2) expression of an intent to be partners in the  
18 business;

19 (3) participation or right to participate in control  
20 of the business;

21 (4) agreement to share or sharing:

22 (A) losses of the business; or

23 (B) liability for claims by third parties against  
24 the business; and

25 (5) agreement to contribute or contributing money or  
26 property to the business.

27 (b) One of the following circumstances, by itself, does not

1 indicate that a person is a partner in the business:

2 (1) the receipt or right to receive a share of profits  
3 as payment:

4 (A) of a debt, including repayment by  
5 installments;

6 (B) of wages or other compensation to an employee  
7 or independent contractor;

8 (C) of rent;

9 (D) to a former partner, surviving spouse or  
10 representative of a deceased or disabled partner, or transferee of  
11 a partnership interest;

12 (E) of interest or other charge on a loan,  
13 regardless of whether the amount varies with the profits of the  
14 business, including a direct or indirect present or future  
15 ownership interest in collateral or rights to income, proceeds, or  
16 increase in value derived from collateral; or

17 (F) of consideration for the sale of a business  
18 or other property, including payment by installments;

19 (2) co-ownership of property, regardless of whether  
20 the co-ownership:

21 (A) is a joint tenancy, tenancy in common,  
22 tenancy by the entirety, joint property, community property, or  
23 part ownership; or

24 (B) is combined with sharing of profits from the  
25 property;

26 (3) the right to share or sharing gross returns or  
27 revenues, regardless of whether the persons sharing the gross

1 returns or revenues have a common or joint interest in the property  
2 from which the returns or revenues are derived; or

3 (4) ownership of mineral property under a joint  
4 operating agreement.

5 (c) An agreement by the owners of a business to share losses  
6 is not necessary to create a partnership. (TRPA 2.03.)

7 Sec. 152.053. QUALIFICATIONS TO BE PARTNER; NONPARTNER'S  
8 LIABILITY TO THIRD PERSON. (a) A person may be a partner unless the  
9 person lacks capacity apart from this chapter.

10 (b) Except as provided by Section 152.307, a person who is  
11 not a partner in a partnership under Section 152.051 is not a  
12 partner as to a third person and is not liable to a third person  
13 under this chapter. (TRPA 2.02(c), 2.03(c).)

14 Sec. 152.054. FALSE REPRESENTATION OF PARTNERSHIP OR  
15 PARTNER. (a) A false representation or other conduct falsely  
16 indicating that a person is a partner with another person does not  
17 of itself create a partnership.

18 (b) A representation or other conduct indicating that a  
19 person is a partner in an existing partnership, if that is not the  
20 case, does not of itself make that person a partner in the  
21 partnership. (TRPA 3.06(a), (b).)

22 Sec. 152.055. AUTHORITY OF CERTAIN PROFESSIONALS TO CREATE  
23 PARTNERSHIP. (a) Persons licensed as doctors of medicine and  
24 persons licensed as doctors of osteopathy by the Texas State Board  
25 of Medical Examiners and persons licensed as podiatrists by the  
26 Texas State Board of Podiatric Medical Examiners may create a  
27 partnership that is jointly owned by those practitioners to perform

1 a professional service that falls within the scope of practice of  
2 those practitioners.

3 (b) When doctors of medicine, osteopathy, and podiatry  
4 create a partnership that is jointly owned by those practitioners,  
5 the authority of each of the practitioners is limited by the scope  
6 of practice of the respective practitioners and none can exercise  
7 control over the other's clinical authority granted by their  
8 respective licenses, either through agreements, bylaws,  
9 directives, financial incentives, or other arrangements that would  
10 assert control over treatment decisions made by the practitioner.

11 (c) The Texas State Board of Medical Examiners and the Texas  
12 State Board of Podiatric Medical Examiners continue to exercise  
13 regulatory authority over their respective licenses. (TRPA  
14 2.02(e).)

15 Sec. 152.056. PARTNERSHIP AS ENTITY. A partnership is an  
16 entity distinct from its partners. (TRPA 2.01.)

17 [Sections 152.057-152.100 reserved for expansion]

18 SUBCHAPTER C. PARTNERSHIP PROPERTY

19 Sec. 152.101. NATURE OF PARTNERSHIP PROPERTY. Partnership  
20 property is not property of the partners. A partner or a partner's  
21 spouse does not have an interest in partnership property. (TRPA  
22 2.04.)

23 Sec. 152.102. CLASSIFICATION AS PARTNERSHIP PROPERTY. (a)  
24 Property is partnership property if acquired in the name of:

25 (1) the partnership; or

26 (2) one or more partners, regardless of whether the  
27 name of the partnership is indicated, if the instrument



1 transferring title to the property indicates:

2 (A) the person's capacity as a partner; or

3 (B) the existence of a partnership.

4 (b) Property is presumed to be partnership property if  
5 acquired with partnership property, regardless of whether the  
6 property is acquired as provided by Subsection (a).

7 (c) Property acquired in the name of one or more partners is  
8 presumed to be the partner's property, regardless of whether the  
9 property is used for partnership purposes, if the instrument  
10 transferring title to the property does not indicate the person's  
11 capacity as a partner or the existence of a partnership, and if the  
12 property is not acquired with partnership property.

13 (d) For purposes of this section, property is acquired in  
14 the name of the partnership by a transfer to:

15 (1) the partnership in its name; or

16 (2) one or more partners in the partners' capacity as  
17 partners in the partnership, if the name of the partnership is  
18 indicated in the instrument transferring title to the property.

19 (TRPA 2.05.)

20 [Sections 152.103-152.200 reserved for expansion]

21 SUBCHAPTER D. RELATIONSHIP BETWEEN PARTNERS AND BETWEEN

22 PARTNERS AND PARTNERSHIPS

23 Sec. 152.201. ADMISSION AS PARTNER. A person may become a  
24 partner only with the consent of all partners. (TRPA 4.01(g).)

25 Sec. 152.202. CREDITS OF AND CHARGES TO PARTNER. (a) Each  
26 partner is credited with an amount equal to:

27 (1) the cash and the value of property the partner

1 contributes to a partnership; and

2 (2) the partner's share of the partnership's profits.

3 (b) Each partner is charged with an amount equal to:

4 (1) the cash and the value of other property  
5 distributed by the partnership to the partner; and

6 (2) the partner's share of the partnership's losses.

7 (c) Each partner is entitled to be credited with an equal  
8 share of the partnership's profits and is chargeable with a share of  
9 the partnership's capital or operating losses in proportion to the  
10 partner's share of the profits. (TRPA 4.01(a), (b).)

11 Sec. 152.203. RIGHTS AND DUTIES OF PARTNER. (a) Each  
12 partner has equal rights in the management and conduct of the  
13 business of a partnership. A partner's right to participate in the  
14 management and conduct of the business is not community property.

15 (b) A partner may use or possess partnership property only  
16 on behalf of the partnership.

17 (c) A partner is not entitled to receive compensation for  
18 services performed for a partnership other than reasonable  
19 compensation for services rendered in winding up the business of  
20 the partnership.

21 (d) A partner who, in the proper conduct of the business of  
22 the partnership or for the preservation of its business or  
23 property, reasonably makes a payment or advance beyond the amount  
24 the partner agreed to contribute, or who reasonably incurs a  
25 liability, is entitled to be repaid and to receive interest from the  
26 date of the:

27 (1) payment or advance; or

1           (2) incurrence of the liability. (TRPA 4.01(c), (d),  
2 (e), (f).)

3           Sec. 152.204. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a)  
4 A partner owes to the partnership and the other partners:

5           (1) a duty of loyalty; and

6           (2) a duty of care.

7           (b) A partner shall discharge the partner's duties to the  
8 partnership and the other partners under this code or under the  
9 partnership agreement and exercise any rights and powers in the  
10 conduct or winding up of the partnership business:

11           (1) in good faith; and

12           (2) in a manner the partner reasonably believes to be  
13 in the best interest of the partnership.

14           (c) A partner does not violate a duty or obligation under  
15 this chapter or under the partnership agreement merely because the  
16 partner's conduct furthers the partner's own interest.

17           (d) A partner, in the partner's capacity as partner, is not  
18 a trustee and is not held to the standards of a trustee. (TRPA  
19 4.04(a), (d), (e), (f).)

20           Sec. 152.205. PARTNER'S DUTY OF LOYALTY. A partner's duty of  
21 loyalty includes:

22           (1) accounting to and holding for the partnership  
23 property, profit, or benefit derived by the partner:

24           (A) in the conduct and winding up of the  
25 partnership business; or

26           (B) from use by the partner of partnership  
27 property;

1           (2) refraining from dealing with the partnership on  
2 behalf of a person who has an interest adverse to the partnership;  
3 and

4           (3) refraining from competing or dealing with the  
5 partnership in a manner adverse to the partnership. (TRPA 4.04(b).)

6           Sec. 152.206. PARTNER'S DUTY OF CARE. (a) A partner's duty  
7 of care to the partnership and the other partners is to act in the  
8 conduct and winding up of the partnership business with the care an  
9 ordinarily prudent person would exercise in similar circumstances.

10          (b) An error in judgment does not by itself constitute a  
11 breach of the duty of care.

12          (c) A partner is presumed to satisfy the duty of care if the  
13 partner acts on an informed basis and in compliance with Section  
14 152.204(b). (TRPA 4.04(c).)

15           Sec. 152.207. STANDARDS OF CONDUCT APPLICABLE TO PERSON  
16 WINDING UP PARTNERSHIP BUSINESS. Sections 152.204-152.206 apply to  
17 a person winding up the partnership business as the personal or  
18 legal representative of the last surviving partner to the same  
19 extent that those sections apply to a partner. (TRPA 4.04(g).)

20           Sec. 152.208. AMENDMENT TO PARTNERSHIP AGREEMENT. A  
21 partnership agreement may be amended only with the consent of all  
22 partners. (TRPA 4.01(i).)

23           Sec. 152.209. DECISION-MAKING REQUIREMENT. (a) A  
24 difference arising in a matter in the ordinary course of the  
25 partnership business may be decided by a majority-in-interest of  
26 the partners.

27          (b) An act outside the ordinary course of business of a

1 partnership may be undertaken only with the consent of all  
2 partners. (TRPA 4.01(h).)

3 Sec. 152.210. PARTNER'S LIABILITY TO PARTNERSHIP AND OTHER  
4 PARTNERS. A partner is liable to a partnership and the other  
5 partners for:

6 (1) a breach of the partnership agreement; or

7 (2) a violation of a duty to the partnership or other  
8 partners under this chapter that causes harm to the partnership or  
9 the other partners. (TRPA 4.05.)

10 Sec. 152.211. REMEDIES OF PARTNERSHIP AND PARTNERS. (a) A  
11 partnership may maintain an action against a partner for a breach of  
12 the partnership agreement or for the violation of a duty to the  
13 partnership causing harm to the partnership.

14 (b) A partner may maintain an action against the partnership  
15 or another partner for legal or equitable relief, including an  
16 accounting of partnership business, to:

17 (1) enforce a right under the partnership agreement;

18 (2) enforce a right under this chapter, including:

19 (A) the partner's rights under Sections  
20 152.201-152.209, 152.212, and 152.213;

21 (B) the partner's right on withdrawal to have the  
22 partner's interest in the partnership redeemed under Subchapter H  
23 or to enforce any other right under Subchapters G and H; and

24 (C) the partner's rights under Subchapter I;

25 (3) enforce the rights and otherwise protect the  
26 interests of the partner, including rights and interests arising  
27 independently of the partnership relationship; or

1           (4) enforce a right under Chapter 11.

2           (c) The accrual of and a time limitation on a right of action  
3 for a remedy under this section is governed by other applicable law.

4           (d) A right to an accounting does not revive a claim barred  
5 by law. (TRPA 4.06.)

6           Sec. 152.212. BOOKS AND RECORDS OF PARTNERSHIP. (a) In this  
7 section, "access" includes the opportunity to inspect and copy  
8 books and records during ordinary business hours.

9           (b) A partnership shall keep its books and records, if any,  
10 at its chief executive office.

11           (c) A partnership shall provide access to its books and  
12 records to a partner or an agent or attorney of a partner.

13           (d) The partnership shall provide a former partner or an  
14 agent or attorney of a former partner access to books and records  
15 pertaining to the period during which the former partner was a  
16 partner or for any other proper purpose with respect to another  
17 period.

18           (e) A partnership may impose a reasonable charge, covering  
19 the costs of labor and material, for copies of documents furnished  
20 under this section. (TRPA 4.03(a), (b).)

21           Sec. 152.213. INFORMATION REGARDING PARTNERSHIP. (a) On  
22 request and to the extent just and reasonable, each partner and the  
23 partnership shall furnish complete and accurate information  
24 concerning the partnership to:

25           (1) a partner;

26           (2) the legal representative of a deceased partner or  
27 a partner who has a legal disability; or

1 (3) an assignee.

2 (b) A legal representative of a deceased partner or a  
3 partner who has a legal disability and an assignee are subject to  
4 the duties of a partner with respect to information made available.  
5 (TRPA 4.03(c).)

6 Sec. 152.214. CERTAIN THIRD-PARTY OBLIGATIONS NOT  
7 AFFECTED. Sections 152.203, 152.208, and 152.209 do not limit a  
8 partnership's obligations to another person under Sections 152.301  
9 and 152.302. (TRPA 4.01(j).)

10 [Sections 152.215-152.300 reserved for expansion]

11 SUBCHAPTER E. RELATIONSHIP BETWEEN PARTNERS AND OTHER PERSONS

12 Sec. 152.301. PARTNER AS AGENT. Each partner is an agent of  
13 the partnership for the purpose of its business. (TRPA 3.02(a)  
14 (part).)

15 Sec. 152.302. BINDING EFFECT OF PARTNER'S ACTION. (a)  
16 Unless a partner does not have authority to act for the partnership  
17 in a particular matter and the person with whom the partner is  
18 dealing knows that the partner lacks authority, an act of a partner,  
19 including the execution of an instrument in the partnership name,  
20 binds the partnership if the act is apparently for carrying on in  
21 the ordinary course:

22 (1) the partnership business; or

23 (2) business of the kind carried on by the  
24 partnership.

25 (b) An act of a partner that is not apparently for carrying  
26 on in the ordinary course a business described by Subsection (a)  
27 binds the partnership only if authorized by the other partners.

1           (c) A conveyance of real property by a partner on behalf of  
2 the partnership not otherwise binding on the partnership binds the  
3 partnership if the property has been conveyed by the grantee or a  
4 person claiming through the grantee to be a holder for value without  
5 knowledge that the partner exceeded that partner's authority in  
6 making the conveyance. (TRPA 3.02(a) (part), (b), (c).)

7           Sec. 152.303. LIABILITY OF PARTNERSHIP FOR CONDUCT OF  
8 PARTNER. (a) A partnership is liable for loss or injury to a  
9 person, including a partner, or for a penalty caused by or incurred  
10 as a result of a wrongful act or omission or other actionable  
11 conduct of a partner acting:

12                 (1) in the ordinary course of business of the  
13 partnership; or

14                 (2) with the authority of the partnership.

15           (b) A partnership is liable for the loss of money or  
16 property of a person who is not a partner that is:

17                 (1) received in the course of the partnership's  
18 business; and

19                 (2) misapplied by a partner while in the custody of the  
20 partnership. (TRPA 3.03.)

21           Sec. 152.304. NATURE OF PARTNER'S LIABILITY. (a) Except as  
22 provided by Subsection (b) or Section 152.801(b), all partners are  
23 liable jointly and severally for a debt or obligation of the  
24 partnership unless otherwise:

25                 (1) agreed by the claimant; or

26                 (2) provided by law.

27           (b) A person who is admitted as a partner into an existing



1 partnership does not have personal liability under Subsection (a)  
2 for an obligation of the partnership that:

3 (1) arises before the partner's admission to the  
4 partnership;

5 (2) relates to an action taken or omission occurring  
6 before the partner's admission to the partnership; or

7 (3) arises before or after the partner's admission to  
8 the partnership under a contract or commitment entered into before  
9 the partner's admission. (TRPA 3.04, 3.07.)

10 Sec. 152.305. REMEDY. An action may be brought against a  
11 partnership and any or all of the partners in the same action or in  
12 separate actions. (TRPA 3.05(b).)

13 Sec. 152.306. ENFORCEMENT OF REMEDY. (a) A judgment  
14 against a partnership is not by itself a judgment against a partner.  
15 A judgment may be entered against a partner who has been served with  
16 process in a suit against the partnership.

17 (b) Except as provided by Subsection (c), a creditor may  
18 proceed against one or more partners or the property of the partners  
19 to satisfy a judgment based on a claim against the partnership only  
20 if a judgment:

21 (1) is also obtained against the partner; and

22 (2) based on the same claim:

23 (A) is obtained against the partnership;

24 (B) has not been reversed or vacated; and

25 (C) remains unsatisfied for 90 days after:

26 (i) the date on which the judgment is  
27 entered; or

1 (ii) the date on which the stay expires, if  
2 the judgment is contested by appropriate proceedings and execution  
3 on the judgment is stayed.

4 (c) Subsection (b) does not prohibit a creditor from  
5 proceeding directly against one or more partners or the property of  
6 the partners without first seeking satisfaction from partnership  
7 property if:

8 (1) the partnership is a debtor in bankruptcy;

9 (2) the creditor and the partnership agreed that the  
10 creditor is not required to comply with Subsection (b);

11 (3) a court orders otherwise, based on a finding that  
12 partnership property subject to execution in the state is clearly  
13 insufficient to satisfy the judgment or that compliance with  
14 Subsection (b) is excessively burdensome; or

15 (4) liability is imposed on the partner by law  
16 independently of the person's status as a partner.

17 (d) This section does not limit the effect of Section  
18 152.801 with respect to a limited liability partnership. (TRPA  
19 3.05(c), (d), (e), (f).)

20 Sec. 152.307. EXTENSION OF CREDIT IN RELIANCE ON FALSE  
21 REPRESENTATION. (a) The rights of a person extending credit in  
22 reliance on a representation described by Section 152.054 are  
23 determined by applicable law other than this chapter and the other  
24 partnership provisions, including the law of estoppel, agency,  
25 negligence, fraud, and unjust enrichment.

26 (b) The rights and duties of a person held liable under  
27 Subsection (a) are also determined by law other than the law

1 described by Subsection (a). (TRPA 3.06(c), (d).)

2 [Sections 152.308-152.400 reserved for expansion]

3 SUBCHAPTER F. TRANSFER OF PARTNERSHIP INTERESTS

4 Sec. 152.401. TRANSFER OF PARTNERSHIP INTEREST. A partner  
5 may transfer all or part of the partner's partnership interest.  
6 (TRPA 5.03(a) (part).)

7 Sec. 152.402. GENERAL EFFECT OF TRANSFER. A transfer of all  
8 or part of a partner's partnership interest:

9 (1) is not an event of withdrawal;

10 (2) does not by itself cause a winding up of the  
11 partnership business; and

12 (3) against the other partners or the partnership,  
13 does not entitle the transferee, during the continuance of the  
14 partnership, to participate in the management or conduct of the  
15 partnership business. (TRPA 5.03(a) (part).)

16 . Sec. 152.403. EFFECT OF TRANSFER ON TRANSFEROR. After  
17 transfer, the transferor continues to have the rights and duties of  
18 a partner other than the interest transferred. (TRPA 5.03(b)  
19 (part).)

20 Sec. 152.404. RIGHTS AND DUTIES OF TRANSFEREE. (a) A  
21 transferee of a partner's partnership interest is entitled to  
22 receive, to the extent transferred, distributions to which the  
23 transferor otherwise would be entitled.

24 (b) If an event requires a winding up of partnership  
25 business under Subchapter I, a transferee is entitled to receive,  
26 to the extent transferred, the net amount otherwise distributable  
27 to the transferor.

1           (c) Until a transferee becomes a partner, the transferee  
2 does not have liability as a partner solely as a result of the  
3 transfer.

4           (d) For a proper purpose the transferee may require  
5 reasonable information or an account of a partnership transaction  
6 and make reasonable inspection of the partnership books. In a  
7 winding up of partnership business, a transferee may require an  
8 accounting only from the date of the latest account agreed to by all  
9 of the partners.

10          (e) Until receipt of notice of a transfer, a partnership is  
11 not required to give effect to a transferee's rights under this  
12 section and Sections 152.401-152.403. (TRPA 5.03(b) (part), (c),  
13 (d).)

14          Sec. 152.405. POWER TO EFFECT TRANSFER OR GRANT OF SECURITY  
15 INTEREST. A partnership is not required to give effect to a transfer  
16 prohibited by a partnership agreement. (TRPA 5.03(e).)

17          Sec. 152.406. EFFECT OF DEATH OR DIVORCE ON PARTNERSHIP  
18 INTEREST. (a) For purposes of this code:

19               (1) on the divorce of a partner, the partner's spouse,  
20 to the extent of the spouse's partnership interest, is a transferee  
21 of the partnership interest from the partner;

22               (2) on the death of a partner, the partner's surviving  
23 spouse, if any, and an heir, legatee, or personal representative of  
24 the partner, to the extent of their respective partnership  
25 interest, is a transferee of the partnership interest from the  
26 partner; and

27               (3) on the death of a partner's spouse, an heir,

1 legatee, or personal representative of the spouse, to the extent of  
2 their respective partnership interest, is a transferee of the  
3 partnership interest from the partner.

4 (b) An event of the type described by Section 152.501  
5 occurring with respect to a partner's spouse is not an event of  
6 withdrawal.

7 (c) This chapter does not impair an agreement for the  
8 purchase or sale of a partnership interest at any time, including  
9 the death of an owner of the partnership interest. (TRPA 5.04.)

10 [Sections 152.407-152.500 reserved for expansion]

11 SUBCHAPTER G. WITHDRAWAL OF PARTNER

12 Sec. 152.501. EVENTS OF WITHDRAWAL. (a) A person ceases to  
13 be a partner on the occurrence of an event of withdrawal.

14 (b) An event of withdrawal of a partner occurs on:

15 (1) receipt by the partnership of notice of the  
16 partner's express will to withdraw as a partner on:

17 (A) the date on which the notice is received; or

18 (B) a later date specified by the notice;

19 (2) an event specified in the partnership agreement as  
20 causing the partner's withdrawal;

21 (3) the partner's expulsion as provided by the  
22 partnership agreement;

23 (4) the partner's expulsion by vote of a  
24 majority-in-interest of the other partners if:

25 (A) it is unlawful to carry on the partnership  
26 business with that partner;

27 (B) there has been a transfer of all or

1 substantially all of that partner's partnership interest, other  
2 than:

3 (i) a transfer for security purposes that  
4 has not been foreclosed; or

5 (ii) the substitution of a successor  
6 trustee or successor personal representative;

7 (C) not later than the 90th day after the date on  
8 which the partnership notifies an entity partner, other than a  
9 nonfiling entity or foreign nonfiling entity partner, that it will  
10 be expelled because it has filed a certificate of termination or the  
11 equivalent, its existence has been involuntarily terminated or its  
12 charter has been revoked, or its right to conduct business has been  
13 terminated or suspended by the jurisdiction of its formation, if  
14 the certificate of termination or the equivalent is not revoked or  
15 its existence, charter, or right to conduct business is not  
16 reinstated; or

17 (D) an event requiring a winding up has occurred  
18 with respect to a nonfiling entity or foreign nonfiling entity that  
19 is a partner;

20 (5) application by the partnership or another partner  
21 for the partner's expulsion by judicial decree because the partner:

22 (A) engaged in wrongful conduct that adversely  
23 and materially affected the partnership business;

24 (B) wilfully or persistently committed a  
25 material breach of:

26 (i) the partnership agreement; or

27 (ii) a duty owed to the partnership or the

1 other partners under Sections 152.204-152.206; or

2 (C) engaged in conduct relating to the  
3 partnership business that made it not reasonably practicable to  
4 carry on the business in partnership with that partner;

5 (6) the partner's:

6 (A) becoming a debtor in bankruptcy;

7 (B) executing an assignment for the benefit of a  
8 creditor;

9 (C) seeking, consenting to, or acquiescing in the  
10 appointment of a trustee, receiver, or liquidator of that partner  
11 or of all or substantially all of that partner's property; or

12 (D) failing, not later than the 90th day after  
13 the appointment, to have vacated or stayed the appointment of a  
14 trustee, receiver, or liquidator of the partner or of all or  
15 substantially all of the partner's property obtained without the  
16 partner's consent or acquiescence, or not later than the 90th day  
17 after the date of expiration of a stay, failing to have the  
18 appointment vacated;

19 (7) if a partner is an individual:

20 (A) the partner's death;

21 (B) the appointment of a guardian or general  
22 conservator for the partner; or

23 (C) a judicial determination that the partner has  
24 otherwise become incapable of performing the partner's duties under  
25 the partnership agreement;

26 (8) termination of a partner's existence;

27 (9) if a partner has transferred all of the partner's

1 partnership interest, redemption of the transferee's interest  
2 under Section 152.611;

3 (10) an agreement to continue the partnership under  
4 Section 11.057(b) if the partnership has received a notice from the  
5 partner under Section 11.057(a)(6) requesting that the partnership  
6 be wound up; or

7 (11) a conversion of the partnership if the partner:

8 (A) did not consent to the conversion; and

9 (B) failed to notify the partnership in writing  
10 of the partner's desire not to withdraw within 60 days after the  
11 later of:

12 (i) the effective date of the conversion;

13 or

14 (ii) the date the partner receives actual  
15 notice of the conversion.

16 (c) A withdrawal of a partner under the circumstances  
17 described in Subsection (b)(11) is effective immediately before the  
18 effective date of the conversion and is not considered a wrongful  
19 withdrawal under Section 152.503. (TRPA 6.01.)

20 Sec. 152.502. EFFECT OF EVENT OF WITHDRAWAL ON PARTNERSHIP  
21 AND OTHER PARTNERS. A partnership continues after an event of  
22 withdrawal. The event of withdrawal affects the relationships  
23 among the withdrawn partner, the partnership, and the continuing  
24 partners as provided by Sections 152.503-152.506 and Subchapter H.  
25 (TRPA 2.06(a).)

26 Sec. 152.503. WRONGFUL WITHDRAWAL; LIABILITY. (a) At any  
27 time before the occurrence of an event requiring a winding up of



1 partnership business, a partner may withdraw from the partnership  
2 and cease to be a partner as provided by Section 152.501.

3 (b) A partner's withdrawal is wrongful only if:

4 (1) the withdrawal breaches an express provision of  
5 the partnership agreement;

6 (2) in the case of a partnership for a definite term or  
7 particular undertaking or for which the partnership agreement  
8 provides for winding up on a specified event, before the expiration  
9 of the term, the completion of the undertaking, or the occurrence of  
10 the event, as appropriate:

11 (A) the partner withdraws by express will;

12 (B) the partner withdraws by becoming a debtor in  
13 bankruptcy; or

14 (C) in the case of a partner that is not an  
15 individual, a trust other than a business trust, or an estate, the  
16 partner is expelled or otherwise withdraws because the partner  
17 wilfully dissolved or terminated; or

18 (3) the partner is expelled by judicial decree under  
19 Section 152.501(b)(5).

20 (c) In addition to other liability of the partner to the  
21 partnership or to the other partners, a wrongfully withdrawing  
22 partner is liable to the partnership and to the other partners for  
23 damages caused by the withdrawal. (TRPA 6.02.)

24 Sec. 152.504. WITHDRAWN PARTNER'S POWER TO BIND  
25 PARTNERSHIP. (a) The action of a withdrawn partner occurring not  
26 later than the first anniversary of the date of the person's  
27 withdrawal binds the partnership if the transaction would bind the

1 partnership before the person's withdrawal and the other party to  
2 the transaction:

3 (1) does not have notice of the person's withdrawal as  
4 a partner;

5 (2) had done business with the partnership within one  
6 year preceding the date of withdrawal; and

7 (3) reasonably believed that the withdrawn partner was  
8 a partner at the time of the transaction.

9 (b) A withdrawn partner is liable to the partnership for  
10 loss caused to the partnership arising from an obligation incurred  
11 by the withdrawn partner after the withdrawal date and for which the  
12 partnership is liable under Subsection (a). (TRPA 7.02.)

13 Sec. 152.505. EFFECT OF WITHDRAWAL ON PARTNER'S EXISTING  
14 LIABILITY. (a) Withdrawal of a partner does not by itself discharge  
15 the partner's liability for an obligation of the partnership  
16 incurred before the date of withdrawal.

17 (b) The estate of a deceased partner is liable for an  
18 obligation of the partnership incurred while the deceased was a  
19 partner to the same extent that a withdrawn partner is liable for an  
20 obligation of the partnership incurred before the date of  
21 withdrawal.

22 (c) A withdrawn partner is discharged from liability  
23 incurred before the date of withdrawal by an agreement to that  
24 effect between the partner and a partnership creditor.

25 (d) If a creditor of a partnership has notice of a partner's  
26 withdrawal and without the consent of the withdrawn partner agrees  
27 to a material alteration in the nature or time of payment of an

1 obligation of the partnership incurred before the date of  
2 withdrawal, the withdrawn partner is discharged from the  
3 obligation. (TRPA 7.03(a), (b), (c), (d).)

4 Sec. 152.506. LIABILITY OF WITHDRAWN PARTNER TO THIRD  
5 PARTY. A person who withdraws as a partner in a circumstance that is  
6 not an event requiring a winding up of partnership business under  
7 Section 11.051 or 11.057 is liable to another party as a partner in  
8 a transaction entered into by the partnership or a surviving  
9 partnership under Section 10.001 not later than the second  
10 anniversary of the date of the partner's withdrawal only if the  
11 other party to the transaction:

12 (1) does not have notice of the partner's withdrawal;  
13 and

14 (2) reasonably believed that the withdrawn partner was  
15 a partner at the time of the transaction. (TRPA 7.03(e).)

16 [Sections 152.507-152.600 reserved for expansion]

17 SUBCHAPTER H. REDEMPTION OF WITHDRAWING PARTNER'S OR  
18 TRANSFEREE'S INTEREST

19 Sec. 152.601. REDEMPTION IF PARTNERSHIP NOT WOUND UP. The  
20 partnership interest of a withdrawn partner automatically is  
21 redeemed by the partnership as of the date of withdrawal in  
22 accordance with this subchapter if:

23 (1) the event of withdrawal occurs under Sections  
24 152.501(b)(1)-(9) and an event requiring a winding up of  
25 partnership business does not occur before the 61st day after the  
26 date of the withdrawal; or

27 (2) the event of a withdrawal occurs under Section

1 152.501(b)(10). (TRPA 7.01(a).)

2           Sec. 152.602. REDEMPTION PRICE. (a) Except as provided by  
3 Subsection (b), the redemption price of a withdrawn partner's  
4 partnership interest is the fair value of the interest on the date  
5 of withdrawal.

6           (b) The redemption price of the partnership interest of a  
7 partner who wrongfully withdraws before the expiration of a  
8 definite term, the completion of a particular undertaking, or the  
9 occurrence of a specified event requiring a winding up of  
10 partnership business is the lesser of:

11           (1) the fair value of the withdrawn partner's  
12 partnership interest on the date of withdrawal; or

13           (2) the amount that the withdrawn partner would have  
14 received if an event requiring a winding up of partnership business  
15 had occurred at the time of the partner's withdrawal.

16           (c) Interest is payable on the amount owed under this  
17 section. (TRPA 7.01(b).)

18           Sec. 152.603. CONTRIBUTION OBLIGATION. If a wrongfully  
19 withdrawing partner would have been required to make contributions  
20 to the partnership under Section 152.707 or 152.708 if an event  
21 requiring winding up of the partnership business had occurred at  
22 the time of withdrawal, the withdrawn partner is liable to the  
23 partnership to make contributions to the partnership in that amount  
24 and pay interest on the amount owed. (TRPA 7.01(c).)

25           Sec. 152.604. SETOFF FOR CERTAIN DAMAGES. The partnership  
26 may set off against the redemption price payable to the withdrawn  
27 partner the damages for wrongful withdrawal under Section

1 152.503(b) and all other amounts owed by the withdrawn partner to  
2 the partnership, whether currently due, including interest. (TRPA  
3 7.01(d).)

4       Sec. 152.605. ACCRUAL OF INTEREST. Interest payable under  
5 Sections 152.602-152.604 accrues from the date of the withdrawal to  
6 the date of payment. (TRPA 7.01(e).)

7       Sec. 152.606. INDEMNIFICATION FOR CERTAIN LIABILITY. (a) A  
8 partnership shall indemnify a withdrawn partner against a  
9 partnership liability incurred before the date of withdrawal,  
10 except for a liability:

11           (1) that is unknown to the partnership at the time; or  
12           (2) incurred by an act of the withdrawn partner under  
13 Section 152.504.

14       (b) For purposes of this section, a liability is unknown to  
15 the partnership if it is not known to a partner other than the  
16 withdrawn partner. (TRPA 7.01(f).)

17       Sec. 152.607. DEMAND OR PAYMENT OF ESTIMATED REDEMPTION.  
18 (a) If a deferred payment is not authorized under Section 152.608  
19 and an agreement on the redemption price of a withdrawn partner's  
20 interest is not reached before the 121st day after the date a  
21 written demand for payment is made by either party, not later than  
22 the 30th day after the expiration of the period, the partnership  
23 shall:

24           (1) pay to the withdrawn partner in cash the amount the  
25 partnership estimates to be the redemption price and any accrued  
26 interest, reduced by any setoffs and accrued interest under Section  
27 152.604; or

1           (2) make written demand for payment of its estimate of  
2 the amount owed by the withdrawn partner to the partnership, minus  
3 any amount owed to the withdrawn partner by the partnership.

4           (b) If a deferred payment is authorized under Section  
5 152.608 or a contribution or other amount is owed by the withdrawn  
6 partner to the partnership, the partnership may offer in writing to  
7 pay, or deliver a written statement of demand for, the amount it  
8 estimates to be the net amount owed, stating the amount and other  
9 terms of the obligation.

10          (c) On request of the other party, the payment, tender,  
11 offer, or demand required or allowed by Subsection (a) or (b) must  
12 be accompanied or followed promptly by:

13           (1) if payment, tender, offer, or demand is made or  
14 delivered by the partnership, a statement of partnership property  
15 and liabilities from the date of the partner's withdrawal and the  
16 most recent available partnership balance sheet and income  
17 statement, if any; and

18           (2) an explanation of the computation of the estimated  
19 payment obligation.

20          (d) The terms of a payment, tender, offer, or demand under  
21 Subsection (a) or (b) govern a redemption if:

22           (1) accompanied by written notice that:

23           (A) the payment or tendered amount, if made,  
24 fully satisfies a party's obligations relating to the redemption of  
25 the withdrawn partner's partnership interest; and

26           (B) an action to determine the redemption price,  
27 a contribution obligation or setoff under Section 152.603 or

1 152.604, or other terms of the redemption obligation must be  
2 commenced not later than the first anniversary of the later of:

3 (i) the date on which the written notice is  
4 given; or

5 (ii) the date on which the information  
6 required by Subsection (c) is delivered; and

7 (2) the party receiving the payment, tender, offer, or  
8 demand does not commence an action in the period described by  
9 Subdivision (1)(B). (TRPA 7.01(g), (h), (i), (j).)

10 Sec. 152.608. DEFERRED PAYMENT ON WRONGFUL WITHDRAWAL. (a)  
11 A partner who wrongfully withdraws before the expiration of a  
12 definite term, the completion of a particular undertaking, or the  
13 occurrence of a specified event requiring a winding up of  
14 partnership business is not entitled to receive any portion of the  
15 redemption price until the expiration of the term, the completion  
16 of the undertaking, or the occurrence of the specified event, as  
17 appropriate, unless the partner establishes to the satisfaction of  
18 a court that earlier payment will not cause undue hardship to the  
19 partnership.

20 (b) A deferred payment accrues interest.

21 (c) The withdrawn partner may seek to demonstrate to the  
22 satisfaction of the court that security for a deferred payment is  
23 appropriate. (TRPA 7.01(k).)

24 Sec. 152.609. ACTION TO DETERMINE TERMS OF REDEMPTION. (a)  
25 A withdrawn partner or the partnership may maintain an action  
26 against the other party under Section 152.211 to determine:

27 (1) the terms of redemption of that partner's

1 interest, including a contribution obligation or setoff under  
2 Section 152.603 or 152.604; or

3 (2) other terms of the redemption obligations of  
4 either party.

5 (b) The action must be commenced not later than the first  
6 anniversary of the later of:

7 (1) the date of delivery of information required by  
8 Section 152.607(c); or

9 (2) the date written notice is given under Section  
10 152.607(d).

11 (c) The court shall determine the terms of the redemption of  
12 the withdrawn partner's interest, any contribution obligation or  
13 setoff due under Section 152.603 or 152.604, and accrued interest  
14 and shall enter judgment for an additional payment or refund.

15 (d) If deferred payment is authorized under Section  
16 152.608, the court shall also determine the security for payment if  
17 requested to consider whether security is appropriate.

18 (e) If the court finds that a party failed to tender payment  
19 or make an offer to pay or to comply with the requirements of  
20 Section 152.607(c) or otherwise acted arbitrarily, vexatiously, or  
21 not in good faith, the court may assess damages against the party,  
22 including, if appropriate, in an amount the court finds equitable:

23 (1) a share of the profits of the continuing business;

24 (2) reasonable attorney's fees; and

25 (3) fees and expenses of appraisers or other experts  
26 for a party to the action. (TRPA 7.01(1).)

27 Sec. 152.610. DEFERRED PAYMENT ON WINDING UP PARTNERSHIP.



1 If a partner withdraws under Section 152.501 and not later than the  
2 60th day after the date of withdrawal an event requiring winding up  
3 occurs under Section 11.051 or 11.057:

4 (1) the partnership may defer paying the redemption  
5 price to the withdrawn partner until the partnership makes a  
6 winding up distribution to the remaining partners; and

7 (2) the redemption price or contribution obligation is  
8 the amount the withdrawn partner would have received or contributed  
9 if the event requiring winding up had occurred at the time of the  
10 partner's withdrawal. (TRPA 7.01(m).)

11 Sec. 152.611. REDEMPTION OF TRANSFEREE'S PARTNERSHIP  
12 INTEREST. (a) A partnership must redeem the partnership interest  
13 of a transferee for its fair value if:

14 (1) the interest was transferred when:

15 (A) the partnership was for a definite term not  
16 yet expired;

17 (B) the partnership was for a particular  
18 undertaking not yet completed; or

19 (C) the partnership agreement provided for  
20 winding up of the partnership business on a specified event that had  
21 not yet occurred;

22 (2) the definite term of the partnership has expired,  
23 the particular undertaking has been completed, or the specified  
24 event has occurred; and

25 (3) the transferee makes a written demand for  
26 redemption.

27 (b) If an agreement for the redemption price of a

1 transferee's interest is not reached before the 121st day after the  
2 date a written demand for redemption is made, the partnership must  
3 pay to the transferee in cash the amount the partnership estimates  
4 to be the redemption price and any accrued interest from the date of  
5 demand not later than the 30th day after the expiration of the  
6 period.

7 (c) On request of the transferee, the payment required by  
8 Subsection (b) must be accompanied or followed by:

9 (1) a statement of partnership property and  
10 liabilities from the date of the demand for redemption;

11 (2) the most recent available partnership balance  
12 sheet and income statement, if any; and

13 (3) an explanation of the computation of the estimated  
14 payment obligation.

15 (d) If the payment required by Subsection (b) is accompanied  
16 by written notice that the payment is in full satisfaction of the  
17 partnership's obligations relating to the redemption of the  
18 transferee's interest, the payment, less interest, is the  
19 redemption price unless the transferee, not later than the first  
20 anniversary of the written notice, commences an action to determine  
21 the redemption price. (TRPA 7.01(n), (o), (p), (q).)

22 Sec. 152.612. ACTION TO DETERMINE TRANSFEREE'S REDEMPTION  
23 PRICE. (a) A transferee may maintain an action against a  
24 partnership to determine the redemption price of the transferee's  
25 interest.

26 (b) The court shall determine the redemption price of the  
27 transferee's interest and accrued interest and enter judgment for

1 payment or refund.

2 (c) If the court finds that the partnership failed to make  
3 payment or otherwise acted arbitrarily, vexatiously, or not in good  
4 faith, the court may assess against the partnership in an amount the  
5 court finds equitable:

6 (1) reasonable attorney's fees; and

7 (2) fees and expenses of appraisers or other experts  
8 for a party to the action.

9 (d) The redemption of a transferee's interest under  
10 Sections 152.611(a) and (b) may be deferred as determined by the  
11 court if the partnership establishes to the satisfaction of the  
12 court that failure to defer redemption will cause undue hardship to  
13 the partnership business. (TRPA 7.01(r), (s).)

14 [Sections 152.613-152.700 reserved for expansion]

15 SUBCHAPTER I. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

16 Sec. 152.701. EFFECT OF EVENT REQUIRING WINDING UP. On the  
17 occurrence of an event requiring winding up of a partnership  
18 business under Section 11.051 or 11.057:

19 (1) the partnership continues until the winding up of  
20 its business is completed, at which time the partnership is  
21 terminated; and

22 (2) the relationship among the partners is changed as  
23 provided by this subchapter. (TRPA 2.06(b), 8.02.)

24 Sec. 152.702. PERSONS ELIGIBLE TO WIND UP PARTNERSHIP  
25 BUSINESS. (a) After the occurrence of an event requiring a winding  
26 up of a partnership business, the partnership business may be wound  
27 up by:

- 1 (1) the partners who have not withdrawn;
- 2 (2) the legal representative of the last surviving  
3 partner; or
- 4 (3) a person appointed by the court to carry out the  
5 winding up under Subsection (b).

6 (b) On application of a partner, a partner's legal  
7 representative or transferee, or a withdrawn partner whose interest  
8 is not redeemed under Section 152.608, a court, for good cause, may  
9 appoint a person to carry out the winding up and may make an order,  
10 direction, or inquiry that the circumstances require. (TRPA  
11 8.03(a).)

12 Sec. 152.703. RIGHTS AND DUTIES OF PERSON WINDING UP  
13 PARTNERSHIP BUSINESS. (a) To the extent appropriate for winding  
14 up, as soon as reasonably practicable, and in the name of and for  
15 and on behalf of the partnership, a person winding up a  
16 partnership's business may take the actions specified in Sections  
17 11.052, 11.053, and 11.055.

18 (b) Section 11.052(a)(2) shall not be applicable to a  
19 partnership. (TRPA 8.03(b).)

20 Sec. 152.704. BINDING EFFECT OF PARTNER'S ACTION AFTER  
21 EVENT REQUIRING WINDING UP. After the occurrence of an event  
22 requiring winding up of the partnership business, a partnership is  
23 bound by a partner's act that:

- 24 (1) is appropriate for winding up; or
- 25 (2) would bind the partnership under Sections 152.301  
26 and 152.302 before the occurrence of the event requiring winding  
27 up, if the other party to the transaction does not have notice that

1 an event requiring winding up has occurred. (TRPA 8.05.)

2       Sec. 152.705. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER  
3 EVENT REQUIRING WINDING UP. (a) Except as provided by Subsection  
4 (b), after the occurrence of an event requiring winding up of the  
5 partnership business, the losses with respect to which a partner  
6 must contribute under Section 152.708(a) include losses from a  
7 liability incurred under Section 152.704.

8       (b) A partner who incurs, with notice that an event  
9 requiring a winding up of the partnership business has occurred, a  
10 partnership liability under Section 152.704(2) by an act that is  
11 not appropriate for winding up is liable to the partnership for a  
12 loss caused to the partnership arising from that liability. (TRPA  
13 8.04.)

14       Sec. 152.706. DISPOSITION OF ASSETS. (a) In winding up the  
15 partnership business, the property of the partnership, including  
16 any required contributions of the partners under Sections 152.707  
17 and 152.708, shall be applied to discharge its obligations to  
18 creditors, including partners who are creditors other than in the  
19 partners' capacities as partners.

20       (b) A surplus shall be applied to pay in cash the net amount  
21 distributable to partners in accordance with their right to  
22 distributions under Section 152.707. (TRPA 8.06(a).)

23       Sec. 152.707. SETTLEMENT OF ACCOUNTS. (a) Each partner is  
24 entitled to a settlement of all partnership accounts on winding up  
25 the partnership business.

26       (b) In settling accounts among the partners, the  
27 partnership interest of a withdrawn partner that is not redeemed

1 under Subchapter H is credited with a share of any profits for the  
2 period after the partner's withdrawal but is charged with a share  
3 of losses for that period only to the extent of profits credited for  
4 that period.

5 (c) The profits and losses that result from the liquidation  
6 of the partnership property must be credited and charged to the  
7 partners' capital accounts.

8 (d) The partnership shall make a distribution to a partner  
9 in an amount equal to that partner's positive balance in the  
10 partner's capital account. Except as provided by Section  
11 152.304(b) or 152.801, a partner shall contribute to the  
12 partnership an amount equal to that partner's negative balance in  
13 the partner's capital account. (TRPA 8.06(b).)

14 Sec. 152.708. CONTRIBUTIONS TO DISCHARGE OBLIGATIONS. (a)  
15 Except as provided by Sections 152.304(b) and 152.801, to the  
16 extent not taken into account in settling the accounts among  
17 partners under Section 152.707:

18 (1) each partner shall contribute, in the proportion  
19 in which the partner shares partnership losses, the amount  
20 necessary to satisfy partnership obligations, excluding  
21 liabilities that creditors have agreed may be satisfied only with  
22 partnership property without recourse to individual partners;

23 (2) if a partner fails to contribute, the other  
24 partners shall contribute the additional amount necessary to  
25 satisfy the partnership obligations in the proportions in which the  
26 partners share partnership losses; and

27 (3) a partner or partner's legal representative may

1 enforce or recover from the other partners, or from the estate of a  
2 deceased partner, contributions the partner or estate makes to the  
3 extent the amount contributed exceeds that partner's or the  
4 estate's share of the partnership obligations.

5 (b) The estate of a deceased partner is liable for the  
6 partner's obligation to contribute to the partnership.

7 (c) The following persons may enforce the obligation of a  
8 partner or the estate of a deceased partner to contribute to a  
9 partnership:

10 (1) the partnership;

11 (2) an assignee for the benefit of creditors of a  
12 partnership or a partner; or

13 (3) a person appointed by a court to represent  
14 creditors of a partnership or a partner. (TRPA 8.06(c), (d), (e).)

15 Sec. 152.709. CONTINUATION OF PARTNERSHIP. (a) If all the  
16 partners in a partnership for a definite term or for a particular  
17 undertaking or for which the partnership agreement provides for  
18 winding up on a specified event agree to continue the partnership  
19 business notwithstanding the expiration of the term, the completion  
20 of the undertaking, or the occurrence of the event, as appropriate,  
21 other than the withdrawal of a partner, the partnership is  
22 continued and the partnership agreement is considered amended to  
23 provide that the expiration, the completion, or the occurrence of  
24 the event did not result in an event requiring the winding up of the  
25 partnership business.

26 (b) A continuation of the business for 90 days by the  
27 partners or those who habitually acted in the business during the

1 term or undertaking or preceding the event, without a settlement or  
2 liquidation of the partnership business and without objection from  
3 a partner, is prima facie evidence of agreement by all partners to  
4 continue the business under Subsection (a).

5 (c) The continuation of the business by the other partners  
6 or by those who habitually acted in the business before the notice  
7 under Section 11.057(b), other than the partner giving the notice,  
8 without any settlement or liquidation of the partnership business,  
9 is prima facie evidence of an agreement to continue the partnership  
10 under Section 11.057(b).

11 (d) To approve a revocation under Section 11.151 by a  
12 partnership of a voluntary decision to wind up pursuant to the  
13 express will of all the partners as specified in Section  
14 11.057(a)(2) or (3), prior to completion of the winding up process,  
15 all the partners must agree in writing to revoke the voluntary  
16 decision to wind up and to continue the business of the partnership.

17 (e) To approve a revocation under Section 11.151 by a  
18 partnership of a voluntary decision to wind up pursuant to the  
19 express will of a majority-in-interest of the partners as specified  
20 in Section 11.057(a)(1), prior to completion of the winding up  
21 process, a majority-in-interest of the partners must agree in  
22 writing to revoke the voluntary decision to wind up and to continue  
23 the business of the partnership. (TRPA 4.07, 8.01(g).)

24 Sec. 152.710. REINSTATEMENT. To approve a reinstatement of  
25 a partnership under Section 11.202, all remaining partners, or  
26 another group or percentage of partners as specified by the  
27 partnership agreement, must agree in writing to reinstate and



1 continue the business of the partnership. (New.)

2 [Sections 152.711-152.800 reserved for expansion]

3 SUBCHAPTER J. LIMITED LIABILITY PARTNERSHIPS

4 Sec. 152.801. LIABILITY OF PARTNER. (a) Except as provided  
5 by Subsection (b), a partner in a limited liability partnership is  
6 not personally liable, directly or indirectly, by contribution,  
7 indemnity, or otherwise, for a debt or obligation of the  
8 partnership incurred while the partnership is a limited liability  
9 partnership.

10 (b) A partner in a limited liability partnership is not  
11 personally liable for a debt or obligation of the partnership  
12 arising from an error, omission, negligence, incompetence, or  
13 malfeasance committed by another partner or representative of the  
14 partnership while the partnership is a limited liability  
15 partnership and in the course of the partnership business unless  
16 the first partner:

17 (1) was supervising or directing the other partner or  
18 representative when the error, omission, negligence, incompetence,  
19 or malfeasance was committed by the other partner or  
20 representative;

21 (2) was directly involved in the specific activity in  
22 which the error, omission, negligence, incompetence, or  
23 malfeasance was committed by the other partner or representative;  
24 or

25 (3) had notice or knowledge of the error, omission,  
26 negligence, incompetence, or malfeasance by the other partner or  
27 representative at the time of the occurrence and then failed to take

1 reasonable action to prevent or cure the error, omission,  
2 negligence, incompetence, or malfeasance.

3 (c) Sections 2.101(1), 152.305, and 152.306 do not limit the  
4 effect of Subsection (a) in a limited liability partnership.

5 (d) In this section, "representative" includes an agent,  
6 servant, or employee of a limited liability partnership.

7 (e) Subsections (a) and (b) do not affect:

8 (1) the liability of a partnership to pay its debts and  
9 obligations from partnership property;

10 (2) the liability of a partner, if any, imposed by law  
11 or contract independently of the partner's status as a partner; or

12 (3) the manner in which service of citation or other  
13 civil process may be served in an action against a partnership.

14 (f) This section controls over the other parts of this  
15 chapter and the other partnership provisions regarding the  
16 liability of partners of a limited liability partnership, the  
17 chargeability of the partners for the debts and obligations of the  
18 partnership, and the obligations of the partners regarding  
19 contributions and indemnity. (TRPA 3.08(a).)

20 Sec. 152.802. REGISTRATION. (a) In addition to complying  
21 with Sections 152.803 and 152.804, a partnership, to become a  
22 limited liability partnership, must file an application with the  
23 secretary of state in accordance with Chapter 4 and this section.  
24 The application must:

25 (1) set out:

26 (A) the name of the partnership;

27 (B) the federal tax identification number of the

1 partnership;

2 (C) the street address of the partnership's  
3 principal office in this state or outside of this state, as  
4 applicable; and

5 (D) the number of partners at the date of  
6 application; and

7 (2) contain a brief statement of the partnership's  
8 business.

9 (b) The application must be signed by:

10 (1) a majority-in-interest of the partners; or

11 (2) one or more partners authorized by a  
12 majority-in-interest of the partners.

13 (c) A partnership is registered as a limited liability  
14 partnership by the secretary of state on:

15 (1) the date on which a completed initial or renewal  
16 application is filed in accordance with Chapter 4; or

17 (2) a later date specified in the application.

18 (d) A registration is not affected by subsequent changes in  
19 the partners of the partnership.

20 (e) The registration of a limited liability partnership is  
21 effective until the first anniversary of the date of registration  
22 or a later effective date, unless the application is:

23 (1) withdrawn or revoked at an earlier time; or

24 (2) renewed in accordance with Subsection (g).

25 (f) A registration may be withdrawn by filing a withdrawal  
26 notice with the secretary of state in accordance with Chapter 4. A  
27 withdrawal notice terminates the status of the partnership as a

1 limited liability partnership from the date on which the notice is  
2 filed or a later date specified in the notice, but not later than  
3 the expiration date under Subsection (e). A withdrawal notice  
4 must:

5 (1) contain:

6 (A) the name of the partnership;

7 (B) the federal tax identification number of the  
8 partnership;

9 (C) the date of registration of the partnership's  
10 last application under this subchapter; and

11 (D) the current street address of the  
12 partnership's principal office in this state and outside this  
13 state, if applicable; and

14 (2) be signed by:

15 (A) a majority-in-interest of the partners; or

16 (B) one or more partners authorized by a  
17 majority-in-interest of the partners.

18 (g) An effective registration may be renewed before its  
19 expiration by filing an application with the secretary of state in  
20 accordance with Chapter 4. A renewal application filed under this  
21 subsection continues an effective registration for one year after  
22 the date the registration would otherwise expire. The renewal  
23 application must contain:

24 (1) current information required for an initial  
25 application; and

26 (2) the most recent date of registration of the  
27 partnership.

1           (h) The secretary of state may remove from its active  
2 records the registration of a partnership the registration of which  
3 has:

4                   (1) been withdrawn or revoked; or

5                   (2) expired and not been renewed.

6           (i) The secretary of state is not responsible for  
7 determining whether a partnership is in compliance with the  
8 requirements of Section 152.804(a).

9           (j) A document filed under this subchapter may be amended by  
10 filing an application for amendment of registration with the  
11 secretary of state in accordance with Chapter 4 and this  
12 subsection. The application for amendment must:

13                   (1) contain:

14                           (A) the name of the partnership;

15                           (B) the tax identification number of the  
16 partnership;

17                           (C) the identity of the document being amended;

18                           (D) the date on which the document being amended  
19 was filed;

20                           (E) a reference to the part of the document being  
21 amended; and

22                           (F) the amendment or correction; and

23                   (2) be signed by:

24                           (A) a majority-in-interest of the partners; or

25                           (B) one or more partners authorized by a  
26 majority-in-interest of the partners. (TRPA 3.08(b)(1), (2), (4),  
27 (5), (6), (7), (8), (11), (14).)

1           Sec. 152.803. NAME. The name of a limited liability  
2 partnership must comply with Section 5.063. (TRPA 3.08(c).)

3           Sec. 152.804. INSURANCE OR FINANCIAL RESPONSIBILITY. (a) A  
4 limited liability partnership must:

5                   (1) carry at least \$100,000 of liability insurance of  
6 a kind that is designed to cover the kind of error, omission,  
7 negligence, incompetence, or malfeasance for which liability is  
8 limited by Section 152.801(b); or

9                   (2) provide \$100,000 specifically designated and  
10 segregated for the satisfaction of judgments against the  
11 partnership for the kind of error, omission, negligence,  
12 incompetence, or malfeasance for which liability is limited by  
13 Section 152.801(b) by:

14                           (A) deposit of cash, bank certificates of  
15 deposit, or United States Treasury obligations in trust or bank  
16 escrow;

17                           (B) a bank letter of credit; or

18                           (C) insurance company bond.

19           (b) If the limited liability partnership is in compliance  
20 with Subsection (a), the requirements of this section may not be  
21 admissible or be made known to the jury in determining an issue of  
22 liability for or extent of:

23                           (1) the debt or obligation in question; or

24                           (2) damages in question.

25           (c) If compliance with Subsection (a) is disputed:

26                           (1) compliance must be determined separately from the  
27 trial or proceeding to determine:

1 (A) the partnership debt or obligation in  
2 question;

3 (B) the amount of the debt or obligation; or

4 (C) partner liability for the debt or obligation;  
5 and

6 (2) the burden of proof of compliance is on the person  
7 claiming limitation of liability under Section 152.801(b). (TRPA  
8 3.08(d).)

9 Sec. 152.805. LIMITED PARTNERSHIP. A limited partnership  
10 may become a limited liability partnership by complying with  
11 applicable provisions of Chapter 153. (TRPA 3.08(e).)

12 [Sections 152.806-152.900 reserved for expansion]

13 SUBCHAPTER K. FOREIGN LIMITED LIABILITY PARTNERSHIPS

14 Sec. 152.901. GENERAL. (a) A foreign limited liability  
15 partnership is subject to Section 2.101 with respect to its  
16 activities in this state to the same extent as a domestic limited  
17 liability partnership.

18 (b) A foreign limited liability partnership may not be  
19 denied registration because of a difference between the laws of the  
20 state under which the partnership is formed and the laws of this  
21 state. (TRPA 10.01(b), (c).)

22 Sec. 152.902. NAME. The name of a foreign limited liability  
23 partnership must:

24 (1) satisfy the requirements of the state of  
25 formation; and

26 (2) comply with Section 5.063. (TRPA 10.02(a) (part).)

27 Sec. 152.903. ACTIVITIES NOT CONSTITUTING TRANSACTIONS

1 BUSINESS. Without excluding other activities that do not constitute  
2 transacting business in this state, a foreign limited liability  
3 partnership is not considered to be transacting business in this  
4 state for purposes of this code because it carries on in this state  
5 one or more of the activities listed by Section 9.251. (TRPA 10.04.)

6 Sec. 152.904. REGISTERED AGENT. A foreign limited liability  
7 partnership subject to this chapter shall maintain a registered  
8 office and registered agent in this state in accordance with  
9 Chapter 5. (TRPA 10.05.)

10 Sec. 152.905. STATEMENT OF FOREIGN QUALIFICATION. (a)  
11 Before transacting business in this state, a foreign limited  
12 liability partnership must file an application for registration in  
13 accordance with this section and Chapters 4 and 9.

14 (b) The application must be signed by:

15 (1) a majority-in-interest of the partners; or

16 (2) one or more partners authorized by a  
17 majority-in-interest of the partners.

18 (c) A partnership is registered as a foreign limited  
19 liability partnership on:

20 (1) the date on which a completed initial or renewal  
21 statement of foreign qualification is filed with the secretary of  
22 state in accordance with Chapter 4; or

23 (2) a later date specified in the statement.

24 (d) A registration is not affected by subsequent changes in  
25 the partners of the partnership.

26 (e) The registration of a foreign limited liability  
27 partnership is effective until the first anniversary of the date



1 after the date of registration or a later effective date, unless the  
2 statement is:

- 3 (1) withdrawn or revoked at an earlier time; or
- 4 (2) renewed in accordance with Section 152.908. (TRPA  
5 10.02(a), (b), (d), (e).)

6 Sec. 152.906. CANCELLATION OF REGISTRATION. (a) A  
7 registration may be canceled by filing a certificate of  
8 cancellation.

9 (b) The certificate of cancellation must:

- 10 (1) contain:
  - 11 (A) the federal tax identification number of the  
12 partnership; and
  - 13 (B) the date of effectiveness of the  
14 partnership's last application for registration under this  
15 subchapter; and
- 16 (2) be signed by:
  - 17 (A) a majority-in-interest of the partners; or
  - 18 (B) one or more partners authorized by a  
19 majority-in-interest of the partners. (TRPA 10.02(f) (part).)

20 Sec. 152.907. EFFECT OF CERTIFICATE OF CANCELLATION. A  
21 certificate of cancellation terminates the registration of the  
22 partnership as a foreign limited liability partnership as of the  
23 date on which the notice is filed or a later date specified in the  
24 notice, but not later than the expiration date under Section  
25 152.905(e). (TRPA 10.02(f) (part).)

26 Sec. 152.908. RENEWAL OF REGISTRATION. (a) An effective  
27 registration may be renewed before its expiration by filing a

1 renewal application for registration with the secretary of state in  
2 accordance with Chapter 4.

3 (b) The renewal application must contain:

4 (1) current information required for an initial  
5 statement of qualification; and

6 (2) the most recent date of registration of the  
7 partnership.

8 (c) An application for registration filed under this  
9 section continues an effective registration for one year after the  
10 date the registration would otherwise expire. (TRPA 10.02(g).)

11 Sec. 152.909. ACTION BY SECRETARY OF STATE. The secretary  
12 of state may remove from its active records the registration of a  
13 foreign limited liability partnership the registration of which  
14 has:

15 (1) been withdrawn or revoked; or

16 (2) expired and not been renewed. (TRPA 10.02(h).)

17 Sec. 152.910. EFFECT OF FAILURE TO QUALIFY. (a) A foreign  
18 limited liability partnership that transacts business in this state  
19 without being registered is subject to Subchapter B, Chapter 9.

20 (b) A partner of a foreign limited liability partnership is  
21 not liable for a debt or obligation of the partnership solely  
22 because the partnership transacted business in this state without  
23 being registered. (TRPA 10.03.)

24 Sec. 152.911. AMENDMENT. (a) A document filed under this  
25 subchapter may be amended by filing with the secretary of state an  
26 application for amendment of registration in accordance with  
27 Chapter 4.

1 (b) The application for amendment must contain:

2 (1) the name of the partnership;

3 (2) the tax identification number of the partnership;

4 (3) the identity of the document being amended;

5 (4) a reference to the date on which the document being  
6 amended was filed;

7 (5) the part of the document being amended; and

8 (6) the amendment or correction. (TRPA 10.02(k).)

9 Sec. 152.912. EXECUTION OF APPLICATION FOR AMENDMENT. The  
10 application for amendment must be signed by:

11 (1) a majority-in-interest of the partners; or

12 (2) one or more partners authorized by a  
13 majority-in-interest of the partners. (TRPA 10.02(k) (part).)

14 Sec. 152.913. EXECUTION OF STATEMENT OF CHANGE OF  
15 REGISTERED OFFICE OR REGISTERED AGENT. A statement filed by a  
16 foreign limited liability partnership in accordance with Section  
17 5.202 must be signed by:

18 (1) a majority-in-interest of the partners; or

19 (2) one or more partners authorized by a  
20 majority-in-interest of the partners. (TRPA 10.03(c) (part).)

21 CHAPTER 153. LIMITED PARTNERSHIPS

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 153.001. DEFINITION. In this chapter, "other limited  
24 partnership provisions" means the provisions of Title 1 and  
25 Chapters 151 and 154, to the extent applicable to limited  
26 partnerships. (New.)

27 Sec. 153.002. CONSTRUCTION. (a) This chapter and the other

1 limited partnership provisions shall be applied and construed to  
2 effect its general purpose to make uniform the law with respect to  
3 limited partnerships among states that have similar laws.

4 (b) The rule that a statute in derogation of the common law  
5 is to be strictly construed does not apply to this chapter and the  
6 other limited partnership provisions. (TRLPA 13.01.)

7 Sec. 153.003. APPLICABILITY OF OTHER LAWS. (a) Except as  
8 provided by Subsection (b), in a case not provided for by this  
9 chapter and the other limited partnership provisions, the  
10 provisions of Chapter 152 governing partnerships that are not  
11 limited partnerships and the rules of law and equity govern.

12 (b) The powers and duties of a limited partner shall not be  
13 governed by a provision of Chapter 152 that would be inconsistent  
14 with the nature and role of a limited partner as contemplated by  
15 this chapter.

16 (c) A limited partner shall not have any obligation or duty  
17 of a general partner solely by reason of being a limited partner.  
18 (TRLPA 13.03(a); New.)

19 Sec. 153.004. NONWAIVABLE TITLE 1 PROVISIONS. (a) Except  
20 as provided by this section, the following provisions of Title 1 may  
21 not be waived or modified in the partnership agreement of a limited  
22 partnership:

23 (1) Chapter 1, if the provision is used to interpret a  
24 provision or define a word or phrase contained in a section listed  
25 in this subsection;

26 (2) Chapter 2, other than Section 2.104(c)(2),  
27 2.104(c)(3), or 2.113;

1           (3) Chapter 3, other than Subchapters C and E of that  
2 chapter and Section 3.151 (provided, that in all events a  
3 partnership agreement may not validly waive or modify Sections  
4 153.551 and 153.552); or

5           (4) Chapter 4, 5, 10, 11, or 12, other than Section  
6 11.058.

7           (b) A provision listed in Subsection (a) may be waived or  
8 modified in the partnership agreement if the provision that is  
9 waived or modified authorizes the limited partnership to waive or  
10 modify the provision in the limited partnership's governing  
11 documents.

12           (c) A provision listed in Subsection (a) may be modified in  
13 the partnership agreement if the provision that is modified  
14 specifies:

15                 (1) the person or group of persons who are entitled to  
16 approve a modification; or

17                 (2) the vote or other method by which a modification is  
18 required to be approved. (New.)

19           Sec. 153.005. WAIVER OR MODIFICATION OF RIGHTS OF THIRD  
20 PARTIES. A provision in this title or in that part of Title 1  
21 applicable to a limited partnership that grants a right to a person,  
22 other than a general partner, a limited partner, or assignee of a  
23 partnership interest in a limited partnership, may be waived or  
24 modified in the partnership agreement of the limited partnership  
25 only if the person consents to the waiver or modification. (New.)

26           [Sections 153.006-153.050 reserved for expansion]

27           SUBCHAPTER B. SUPPLEMENTAL PROVISIONS REGARDING AMENDMENT

## TO CERTIFICATE OF FORMATION

1  
2           Sec. 153.051. REQUIRED AMENDMENT TO CERTIFICATE OF  
3 FORMATION. (a) A general partner shall file a certificate of  
4 amendment reflecting the occurrence of one or more of the following  
5 events not later than the 30th day after the date on which the event  
6 occurred:

- 7           (1) the admission of a new general partner;  
8           (2) the withdrawal of a general partner;  
9           (3) a change in the name of the limited partnership; or  
10          (4) except as provided by Section 5.202, a change in:  
11           (A) the address of the registered office; or  
12           (B) the name or address of the registered agent  
13 of the limited partnership.

14          (b) A general partner who becomes aware that a statement in  
15 a certificate of formation was false when made or that a matter  
16 described in the certificate has changed, making the certificate  
17 false in any material respect, shall promptly amend the certificate  
18 to make it accurate. (TRLPA 2.02(b), (c), (e).)

19           Sec. 153.052. DISCRETIONARY AMENDMENT TO CERTIFICATE OF  
20 FORMATION. (a) A certificate of formation may be amended at any  
21 time for a proper purpose as determined by the general partners.

22          (b) A certificate of formation may be amended to state the  
23 name, mailing address, and street address of the business or  
24 residence of each person winding up the limited partnership's  
25 affairs if, after an event requiring the winding up of a limited  
26 partnership but before the limited partnership is reconstituted or  
27 a certificate of cancellation is filed as provided by Section

1 153.451:

2 (1) the certificate of formation has been amended to  
3 reflect the withdrawal of all general partners; or

4 (2) a person who is not shown on the certificate of  
5 formation as a general partner is carrying out the winding up of a  
6 limited partnership's affairs.

7 (c) If the certificate of formation is amended under  
8 Subsection (b), each person winding up the limited partnership's  
9 affairs shall execute and file the certificate of amendment. A  
10 person winding up the partnership's affairs is not subject to  
11 liability as a general partner because of the filing of the  
12 certificate of amendment.

13 (d) A general partner who is not winding up the limited  
14 partnership's affairs is not required to execute and file a  
15 certificate of amendment as provided by this section. (TRLPA  
16 2.02(d), (f).)

17 [Sections 153.053-153.100 reserved for expansion]

18 SUBCHAPTER C. LIMITED PARTNERS

19 Sec. 153.101. ADMISSION OF LIMITED PARTNERS. (a) In  
20 connection with the formation of a limited partnership, a person  
21 acquiring a limited partnership interest becomes a limited partner  
22 on the later of:

23 (1) the date on which the limited partnership is  
24 formed; or

25 (2) the date stated in the records of the limited  
26 partnership as the date on which the person becomes a limited  
27 partner or, if that date is not stated in those records, the date on

1 which the person's admission is first reflected in the records of  
2 the limited partnership.

3 (b) After a limited partnership is formed, a person who  
4 acquires a partnership interest directly from the limited  
5 partnership becomes a new limited partner on:

6 (1) compliance with the provisions of the partnership  
7 agreement governing admission of new limited partners; or

8 (2) if the partnership agreement does not contain  
9 relevant admission provisions, the written consent of all partners.

10 (c) After formation of a limited partnership, an assignee of  
11 a partnership interest becomes a new limited partner as provided by  
12 Section 153.253(a).

13 (d) A person may be a limited partner unless the person  
14 lacks capacity apart from this chapter and the other limited  
15 partnership provisions. (TRLPA 3.01.)

16 Sec. 153.102. LIABILITY TO THIRD PARTIES. (a) A limited  
17 partner is not liable for the obligations of a limited partnership  
18 unless:

19 (1) the limited partner is also a general partner; or

20 (2) in addition to the exercise of the limited  
21 partner's rights and powers as a limited partner, the limited  
22 partner participates in the control of the business.

23 (b) If the limited partner participates in the control of  
24 the business, the limited partner is liable only to a person who  
25 transacts business with the limited partnership reasonably  
26 believing, based on the limited partner's conduct, that the limited  
27 partner is a general partner. (TRLPA 3.03(a), (d).)



1           Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN  
2 BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and  
3 Sections 153.102, 153.104, and 153.105, a limited partner does not  
4 participate in the control of the business because the limited  
5 partner has or has acted in one or more of the following capacities  
6 or possesses or exercises one or more of the following powers:

7           (1) acting as:

8                   (A) a contractor for or an agent or employee of  
9 the limited partnership;

10                   (B) a contractor for or an agent or employee of a  
11 general partner;

12                   (C) an officer, director, or stockholder of a  
13 corporate general partner;

14                   (D) a partner of a partnership that is a general  
15 partner of the limited partnership; or

16                   (E) a member or manager of a limited liability  
17 company that is a general partner of the limited partnership;

18           (2) acting in a capacity similar to that described in  
19 Subdivision (1) with any other person that is a general partner of  
20 the limited partnership;

21           (3) consulting with or advising a general partner on  
22 any matter, including the business of the limited partnership;

23           (4) acting as surety, guarantor, or endorser for the  
24 limited partnership, guaranteeing or assuming one or more specific  
25 obligations of the limited partnership, or providing collateral for  
26 borrowings of the limited partnership;

27           (5) calling, requesting, attending, or participating

1 in a meeting of the partners or the limited partners;

2 (6) winding up the business of a limited partnership  
3 under Chapter 11 and Subchapter K of this chapter;

4 (7) taking an action required or permitted by law to  
5 bring, pursue, settle, or otherwise terminate a derivative action  
6 in the right of the limited partnership;

7 (8) serving on a committee of the limited partnership  
8 or the limited partners; or

9 (9) proposing, approving, or disapproving, by vote or  
10 otherwise, one or more of the following matters:

11 (A) the dissolution or winding up of the limited  
12 partnership;

13 (B) an election to reconstitute the limited  
14 partnership or continue the business of the limited partnership;

15 (C) the sale, exchange, lease, mortgage,  
16 assignment, pledge, or other transfer of, or granting of a security  
17 interest in, an asset of the limited partnership;

18 (D) the incurring, renewal, refinancing, or  
19 payment or other discharge of indebtedness by the limited  
20 partnership;

21 (E) a change in the nature of the business of the  
22 limited partnership;

23 (F) the admission, removal, or retention of a  
24 general partner;

25 (G) the admission, removal, or retention of a  
26 limited partner;

27 (H) a transaction or other matter involving an

1 actual or potential conflict of interest;

2 (I) an amendment to the partnership agreement or  
3 certificate of formation;

4 (J) if the limited partnership is qualified as an  
5 investment company under the federal Investment Company Act of 1940  
6 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required  
7 by that Act or the rules and regulations of the Securities and  
8 Exchange Commission under that Act, to be approved by the holders of  
9 beneficial interests in an investment company, including:

10 (i) electing directors or trustees of the  
11 investment company;

12 (ii) approving or terminating an investment  
13 advisory or underwriting contract;

14 (iii) approving an auditor; and

15 (iv) acting on another matter that that Act  
16 requires to be approved by the holders of beneficial interests in  
17 the investment company;

18 (K) indemnification of a general partner under  
19 Chapter 8 or otherwise;

20 (L) any other matter stated in the partnership  
21 agreement;

22 (M) the exercising of a right or power granted or  
23 permitted to limited partners under this code and not specifically  
24 enumerated in this section; or

25 (N) the merger or conversion of a limited  
26 partnership. (TRLPA 3.03(b).)

27 Sec. 153.104. ENUMERATION OF ACTIONS NOT EXCLUSIVE. The

1 enumeration in Section 153.103 does not mean that a limited partner  
2 who has acted or acts in another capacity or possesses or exercises  
3 another power constitutes participation by that limited partner in  
4 the control of the business of the limited partnership. (TRLPA  
5 3.03(c).)

6 Sec. 153.105. CREATION OF RIGHTS. Sections 153.103 and  
7 153.104 do not create rights of limited partners. Rights of limited  
8 partners may be created only by:

- 9 (1) the certificate of formation;
- 10 (2) the partnership agreement;
- 11 (3) other sections of this chapter; or
- 12 (4) the other limited partnership provisions. (TRLPA  
13 3.03(e).)

14 Sec. 153.106. ERRONEOUS BELIEF OF CONTRIBUTOR BEING LIMITED  
15 PARTNER. Except as provided by Section 153.109, a person who  
16 erroneously but in good faith believes that the person has made a  
17 contribution to and has become a limited partner in a limited  
18 partnership is not liable as a general partner or otherwise  
19 obligated because of making or attempting to make the contribution,  
20 receiving distributions from the partnership, or exercising the  
21 rights of a limited partner if, within a reasonable time after  
22 ascertaining the mistake, the person:

- 23 (1) causes an appropriate certificate of formation or  
24 certificate of amendment to be signed and filed;
- 25 (2) files or causes to be filed with the secretary of  
26 state a written statement in accordance with Section 153.107; or
- 27 (3) withdraws from participation in future profits of

1 the enterprise by executing and filing with the secretary of state a  
2 certificate declaring the person's withdrawal under this section.  
3 (TRLPA 3.04(a) (part).)

4 Sec. 153.107. STATEMENT REQUIRED FOR LIABILITY PROTECTION.

5 (a) A written statement filed under Section 153.106(2) must be  
6 entitled "Filing under Section 153.106(2), Business Organizations  
7 Code," and contain:

8 (1) the name of the partnership;

9 (2) the name and mailing address of the person signing  
10 the written statement; and

11 (3) a statement that:

12 (A) the person signing the written statement  
13 acquired a limited partnership interest in the partnership;

14 (B) the person signing the written statement has  
15 made an effort to cause a general partner of the partnership to file  
16 an accurate certificate of formation required by the code and the  
17 general partner has failed or refused to file the certificate; and

18 (C) the statement is being filed under Section  
19 153.106(2) and the person signing the written statement is claiming  
20 status as a limited partner of the partnership named in the  
21 document.

22 (b) The statement is effective for 180 days.

23 (c) A statement filed under Section 153.106(2) may be signed  
24 by more than one person claiming limited partnership status under  
25 this section and Sections 153.106, 153.108, and 153.109. (TRLPA  
26 3.04(a) (part), (b) (part), (e).)

27 Sec. 153.108. REQUIREMENTS FOR LIABILITY PROTECTION

1 FOLLOWING EXPIRATION OF STATEMENT. (a) If a certificate described  
2 by Section 153.106(1) has not been filed before the expiration of  
3 the 180-day period described by Section 153.107(b), the person  
4 filing the statement has no further protection from liability under  
5 Section 153.106(2) unless the person complies with this section. To  
6 be protected under Section 153.106 the person must, not later than  
7 the 10th day after the date of expiration of the 180-day period:

8 (1) withdraw under Section 153.106(3); or

9 (2) bring an action under Section 153.554 to compel  
10 the execution and filing of a certificate of formation or  
11 amendment.

12 (b) If an action is brought within the applicable period and  
13 is diligently prosecuted to conclusion, the person bringing the  
14 action continues to be protected from liability under Section  
15 153.106(2) until the action is finally decided adversely to that  
16 person.

17 (c) This section and Sections 153.106, 153.107, and 153.109  
18 do not protect a person from liability that arises under Sections  
19 153.102-153.105. (TRLPA 3.04(b) (part), (d).)

20 Sec. 153.109. LIABILITY OF ERRONEOUS CONTRIBUTOR.  
21 Regardless of whether Sections 153.106, 153.107, and 153.108 apply,  
22 a person who makes a contribution in the circumstances described by  
23 Section 153.106 is liable as a general partner to a third party who  
24 transacts business with the partnership before an action taken  
25 under Section 153.106 if:

26 (1) the contributor has knowledge or notice that no  
27 certificate has been filed or that the certificate inaccurately

1 referred to the contributor as a general partner; and

2 (2) the third party reasonably believed, based on the  
3 contributor's conduct, that the contributor was a general partner  
4 at the time of the transaction and extended credit to the  
5 partnership in reasonable reliance on the credit of the  
6 contributor. (TRLPA 3.04(c).)

7 Sec. 153.110. WITHDRAWAL OF LIMITED PARTNER. A limited  
8 partner may withdraw from a limited partnership only at the time or  
9 on the occurrence of an event specified in a written partnership  
10 agreement. The withdrawal of the partner must be made in accordance  
11 with that agreement. (TRLPA 6.03.)

12 Sec. 153.111. DISTRIBUTION ON WITHDRAWAL. Except as  
13 otherwise provided by Section 153.210 or the partnership agreement,  
14 on withdrawal a withdrawing limited partner is entitled to receive,  
15 not later than a reasonable time after withdrawal, the fair value of  
16 that limited partner's interest in the limited partnership as of  
17 the date of withdrawal. (TRLPA 6.04.)

18 Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. A limited  
19 partner who receives a distribution that is not permitted under  
20 Section 153.210 is not required to return the distribution unless  
21 the limited partner knew that the distribution violated the  
22 prohibition of Section 153.210. This section does not affect an  
23 obligation of the limited partner under the partnership agreement  
24 or other applicable law to return the distribution. (TRLPA  
25 6.07(b).)

26 Sec. 153.113. POWERS OF ESTATE OF LIMITED PARTNER WHO IS  
27 DECEASED OR INCAPACITATED. If a limited partner who is an

1 individual dies or a court adjudges the limited partner to be  
2 incapacitated in managing the limited partner's person or property,  
3 the limited partner's executor, administrator, guardian,  
4 conservator, or other legal representative may exercise all of the  
5 limited partner's rights and powers to settle the limited partner's  
6 estate or administer the limited partner's property, including the  
7 power of an assignee to become a limited partner under the  
8 partnership agreement. (TRLPA 7.05.)

9 [Sections 153.114-153.150 reserved for expansion]

10 SUBCHAPTER D. GENERAL PARTNERS

11 Sec. 153.151. ADMISSION OF ADDITIONAL GENERAL PARTNERS. (a)  
12 After a limited partnership is formed, additional general partners  
13 may be admitted:

14 (1) in the manner provided by a written partnership  
15 agreement; or

16 (2) if a written partnership agreement does not  
17 provide for the admission of additional general partners, with the  
18 written consent of all partners.

19 (b) A person may be a general partner unless the person  
20 lacks capacity apart from this chapter. (TRLPA 4.01.)

21 Sec. 153.152. GENERAL POWERS AND LIABILITIES OF GENERAL  
22 PARTNER. (a) Except as provided by this chapter, the other limited  
23 partnership provisions, or a partnership agreement, a general  
24 partner of a limited partnership:

25 (1) has the rights and powers and is subject to the  
26 restrictions of a partner in a partnership without limited  
27 partners; and



1           (2) has the liabilities of a partner in a partnership  
2 without limited partners to the partnership and to the other  
3 partners.

4           (b) Except as provided by this chapter or the other limited  
5 partnership provisions, a general partner of a limited partnership  
6 has the liabilities of a partner in a partnership without limited  
7 partners to a person other than the partnership and the other  
8 partners. (TRLPA 4.03.)

9           Sec. 153.153. POWERS AND LIABILITIES OF PERSON WHO IS BOTH  
10 GENERAL PARTNER AND LIMITED PARTNER. A person who is both a general  
11 partner and a limited partner:

12           (1) has the rights and powers and is subject to the  
13 restrictions and liabilities of a general partner; and

14           (2) except as otherwise provided by the partnership  
15 agreement, this chapter, or the other limited partnership  
16 provisions, has the rights and powers and is subject to the  
17 restrictions and liabilities, if any, of a limited partner to the  
18 extent of the general partner's participation in the partnership as  
19 a limited partner. (TRLPA 4.04 (part).)

20           Sec. 153.154. CONTRIBUTIONS BY AND DISTRIBUTIONS TO GENERAL  
21 PARTNER. A general partner of a limited partnership may make a  
22 contribution to, be allocated profits and losses of, and receive a  
23 distribution from the limited partnership as a general partner, a  
24 limited partner, or both. (TRLPA 4.04 (part).)

25           Sec. 153.155. WITHDRAWAL OF GENERAL PARTNER. (a) A person  
26 ceases to be a general partner of a limited partnership on the  
27 occurrence of one or more of the following events of withdrawal:

1           (1) the general partner withdraws as a general partner  
2 from the limited partnership as provided by Subsection (b);

3           (2) the general partner ceases to be a general partner  
4 of the limited partnership as provided by Section 153.252(b);

5           (3) the general partner is removed as a general  
6 partner in accordance with the partnership agreement;

7           (4) unless otherwise provided by a written partnership  
8 agreement, or with the written consent of all partners, the general  
9 partner:

10           (A) makes a general assignment for the benefit of  
11 creditors;

12           (B) files a voluntary bankruptcy petition;

13           (C) becomes the subject of an order for relief or  
14 is declared insolvent in a federal or state bankruptcy or  
15 insolvency proceeding;

16           (D) files a petition or answer seeking for the  
17 general partner a reorganization, arrangement, composition,  
18 readjustment, liquidation, dissolution, or similar relief under  
19 law;

20           (E) files a pleading admitting or failing to  
21 contest the material allegations of a petition filed against the  
22 general partner in a proceeding of the type described by Paragraphs  
23 (A)-(D); or

24           (F) seeks, consents to, or acquiesces in the  
25 appointment of a trustee, receiver, or liquidator of the general  
26 partner or of all or a substantial part of the general partner's  
27 properties;

1           (5) unless otherwise provided by a written partnership  
2 agreement or with the written consent of all partners, the  
3 expiration of:

4           (A) 120 days after the date of the commencement  
5 of a proceeding against the general partner seeking reorganization,  
6 arrangement, composition, readjustment, liquidation, dissolution,  
7 or similar relief under law if the proceeding has not been  
8 previously dismissed;

9           (B) 90 days after the date of the appointment,  
10 without the general partner's consent, of a trustee, receiver, or  
11 liquidator of the general partner or of all or a substantial part of  
12 the general partner's properties if the appointment has not  
13 previously been vacated or stayed; or

14           (C) 90 days after the date of expiration of a  
15 stay, if the appointment has not previously been vacated;

16           (6) the death of a general partner;

17           (7) a court adjudicating a general partner who is an  
18 individual mentally incompetent to manage the general partner's  
19 person or property;

20           (8) unless otherwise provided by a written partnership  
21 agreement or with the written consent of all partners, the  
22 commencement of winding up activities intended to conclude in the  
23 termination of a trust that is a general partner, but not merely the  
24 substitution of a new trustee;

25           (9) unless otherwise provided by a written partnership  
26 agreement or with the written consent of all partners, the  
27 commencement of winding up activities of a separate partnership

1 that is a general partner;

2 (10) unless otherwise provided by a written  
3 partnership agreement or with the written consent of all partners,  
4 the:

5 (A) filing of a certificate of termination or its  
6 equivalent for an entity, other than a nonfiling entity or a foreign  
7 nonfiling entity, that is a general partner; or

8 (B) termination or revocation of the certificate  
9 of formation or its equivalent of an entity, other than a nonfiling  
10 entity or a foreign nonfiling entity, that is a general partner and  
11 the expiration of 90 days after the date of notice to the entity of  
12 termination or revocation without a reinstatement of its  
13 certificate of formation or its equivalent; or

14 (11) the distribution by the fiduciary of an estate  
15 that is a general partner of the estate's entire interest in the  
16 limited partnership.

17 (b) A general partner may withdraw at any time from a  
18 limited partnership and cease to be a general partner under  
19 Subsection (a) by giving written notice to the other partners.  
20 (TRLPA 4.02(a), 6.02(a) (part).)

21 Sec. 153.156. NOTICE OF EVENT OF WITHDRAWAL. A general  
22 partner who is subject to an event that with the passage of the  
23 specified period becomes an event of withdrawal under Section  
24 153.155(a)(4) or (5) shall notify the other partners of the event  
25 not later than the 30th day after the date on which the event  
26 occurred. (TRLPA 4.02(b).)

27 Sec. 153.157. WITHDRAWAL OF GENERAL PARTNER IN VIOLATION OF

1 PARTNERSHIP AGREEMENT. Unless otherwise provided by the  
2 partnership agreement, a withdrawal by a general partner of a  
3 partnership for a definite term or particular undertaking before  
4 the expiration of that term or completion of that undertaking is a  
5 breach of the partnership agreement. (TRLPA 6.02(a) (part).)

6 Sec. 153.158. EFFECT OF WITHDRAWAL. (a) Unless otherwise  
7 provided by a written partnership agreement and subject to the  
8 liability created under Section 153.162, if a general partner  
9 ceases to be a general partner under Section 153.155, the remaining  
10 general partner or partners, or, if there are no remaining general  
11 partners, a majority-in-interest of the limited partners in a vote  
12 that excludes any limited partnership interest held by the  
13 withdrawing general partner, may:

14 (1) convert that general partner's partnership  
15 interest to that of a limited partner; or

16 (2) pay to the withdrawn general partner in cash, or  
17 secure by bond approved by a court of competent jurisdiction, the  
18 value of that partner's partnership interest minus the damages  
19 caused if the withdrawal constituted a breach of the partnership  
20 agreement.

21 (b) Until an action described by Subsection (a) is taken,  
22 the owner of the partnership interest of the withdrawn general  
23 partner has the status of an assignee under Subchapter F, Section  
24 153.113, and Section 153.555.

25 (c) If there are no remaining general partners following the  
26 withdrawal of a general partner, the partnership may be  
27 reconstituted. (TRLPA 6.02(b), (e).)

1           Sec. 153.159. CONVERSION OF PARTNERSHIP INTEREST AFTER  
2 WITHDRAWAL. If the partners convert the partnership interest under  
3 Section 153.158(a)(1), the limited partnership interest may be  
4 reduced pro rata with all other partners to provide compensation,  
5 an interest in the partnership, or both, to a replacement general  
6 partner. (TRLPA 6.02(c) (part).)

7           Sec. 153.160. EFFECT OF CONVERSION OF PARTNERSHIP INTEREST.

8       (a) After an amendment to the certificate of formation reflecting  
9 the general partner's withdrawal as a general partner is filed  
10 under Section 153.051, the withdrawing general partner:

11           (1) may vote as a limited partner in all matters, to  
12 the same extent as the members of the class of limited partners  
13 having the least voting rights with respect to the matter on which  
14 the vote is taken; and

15           (2) may not vote on the admission and compensation of a  
16 general partner who replaces the withdrawing general partner.

17       (b) If the general partner's withdrawal violates the  
18 partnership agreement, the general partner does not have voting  
19 rights. (TRLPA 6.02(c) (part).)

20           Sec. 153.161. LIABILITY OF GENERAL PARTNER FOR DEBT  
21 INCURRED AFTER EVENT OF WITHDRAWAL. (a) Unless otherwise provided  
22 by a written partnership agreement and subject to the liability  
23 created under Section 153.162, a general partner who ceases to be a  
24 general partner under Section 153.155 is not personally liable in  
25 the partner's capacity as a general partner for partnership debt  
26 incurred after that partner ceases to be a general partner unless  
27 the applicable creditor at the time the debt was incurred

1 reasonably believed that the partner remained a general partner.

2 (b) A creditor of the partnership has reason to believe that  
3 a partner remains a general partner if:

4 (1) the creditor had no knowledge or notice of the  
5 general partner's withdrawal and:

6 (A) was a creditor of the partnership at the time  
7 of the general partner's withdrawal; or

8 (B) had extended credit to the partnership within  
9 two years before the date of withdrawal; or

10 (2) the creditor had known that the partner was a  
11 general partner in the partnership before the general partner's  
12 withdrawal and had no knowledge or notice of the withdrawal and the  
13 general partner's withdrawal had not been advertised in a  
14 newspaper of general circulation in each place at which the  
15 partnership business was regularly conducted. (TRLPA 6.02(d).)

16 Sec. 153.162. LIABILITY FOR WRONGFUL WITHDRAWAL. (a) If a  
17 general partner's withdrawal from a limited partnership violates  
18 the partnership agreement, the partnership may recover damages from  
19 the withdrawing general partner for breach of the partnership  
20 agreement, including the reasonable cost of obtaining replacement  
21 of the services the withdrawn partner was obligated to perform.

22 (b) In addition to pursuing any remedy available under  
23 applicable law, the partnership may effect the recovery of damages  
24 under Subsection (a) by offsetting those damages against the amount  
25 otherwise distributable to the withdrawing general partner,  
26 reducing the limited partner interest into which the withdrawing  
27 general partner's interest may be converted under Section

1 153.158(a)(1), or both. (TRLPA 6.02(a) (part).)

2 [Sections 153.163-153.200 reserved for expansion]

3 SUBCHAPTER E. FINANCES

4 Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a  
5 limited partner may consist of a tangible or intangible benefit to  
6 the limited partnership or other property of any kind or nature,  
7 including:

- 8 (1) cash;
- 9 (2) a promissory note;
- 10 (3) services performed;
- 11 (4) a contract for services to be performed; and
- 12 (5) another interest in or security of the limited  
13 partnership, another domestic or foreign limited partnership, or  
14 other entity. (TRLPA 5.01.)

15 Sec. 153.202. ENFORCEABILITY OF PROMISE TO MAKE  
16 CONTRIBUTION. (a) A promise by a limited partner to make a  
17 contribution to, or pay cash or transfer other property to, a  
18 limited partnership is not enforceable unless the promise is in  
19 writing and signed by the limited partner.

20 (b) Except as otherwise provided by the partnership  
21 agreement, a partner or the partner's legal representative or  
22 successor is obligated to the limited partnership to perform an  
23 enforceable promise to make a contribution to or pay cash or  
24 transfer other property to a limited partnership, notwithstanding  
25 the partner's death, disability, or other change in circumstances.

26 (c) If a partner or a partner's legal representative or  
27 successor does not make a contribution or other payment of cash or



1 transfer of other property required by the enforceable promise,  
2 whether as a contribution or with respect to a contribution  
3 previously made, that partner or the partner's legal representative  
4 or successor is obligated, at the option of the limited  
5 partnership, to pay to the partnership an amount of cash equal to  
6 the portion of the agreed value, as stated in the partnership  
7 agreement or in the partnership records required to be kept under  
8 Sections 153.551 and 153.552, of the contribution represented by  
9 the amount of cash that has not been paid or the value of the  
10 property that has not been transferred.

11 (d) A partnership agreement may provide that the  
12 partnership interest of a partner who fails to make a payment of  
13 cash or transfer of other property to the partnership, whether as a  
14 contribution or with respect to a contribution previously made,  
15 required by an enforceable promise is subject to specified  
16 consequences, which may include:

17 (1) a reduction of the defaulting partner's percentage  
18 or other interest in the limited partnership;

19 (2) subordination of the partner's partnership  
20 interest to the interest of nondefaulting partners;

21 (3) a forced sale of the partner's partnership  
22 interest;

23 (4) forfeiture of the partner's partnership interest;

24 (5) the lending of money to the defaulting partner by  
25 other partners of the amount necessary to meet the defaulting  
26 partner's commitment;

27 (6) a determination of the value of the defaulting

1 partner's partnership interest by appraisal or by formula and  
2 redemption or sale of the partnership interest at that value; or

3 (7) another penalty or consequence. (TRLPA 5.02(a),  
4 (b), (c).)

5 Sec. 153.203. RELEASE OF OBLIGATION TO PARTNERSHIP. Unless  
6 otherwise provided by the partnership agreement, the obligation of  
7 a partner or the legal representative or successor of a partner to  
8 make a contribution, pay cash, transfer other property, or return  
9 cash or property paid or distributed to the partner in violation of  
10 this chapter or the partnership agreement may be compromised or  
11 released only by consent of all of the partners. (TRLPA 5.02(d)  
12 (part).)

13 Sec. 153.204. ENFORCEABILITY OF OBLIGATION. (a)  
14 Notwithstanding a compromise or release under Section 153.203, a  
15 creditor of a limited partnership who extends credit or otherwise  
16 acts in reasonable reliance on an obligation described by Section  
17 153.203 may enforce the original obligation if:

18 (1) the obligation is reflected in a document signed  
19 by the partner; and

20 (2) the document is not amended or canceled to reflect  
21 the compromise or release.

22 (b) Notwithstanding the compromise or release, a general  
23 partner remains liable to persons other than the partnership and  
24 the other partners, as provided by Sections 153.152(a)(2) and (b).  
25 (TRLPA 5.02(d) (part).)

26 Sec. 153.205. REQUIREMENTS TO ENFORCE CONDITIONAL  
27 OBLIGATION. (a) An obligation of a limited partner of a limited

1 partnership that is subject to a condition may be enforced by the  
2 partnership creditor described by Section 153.204 only if the  
3 condition is satisfied or waived by or with respect to the limited  
4 partner.

5 (b) A conditional obligation of a limited partner of a  
6 limited partnership includes a contribution payable on a  
7 discretionary call of the limited partnership before the time the  
8 call occurs. (TRLPA 5.02(d) (part).)

9 Sec. 153.206. ALLOCATION OF PROFITS AND LOSSES. (a) The  
10 profits and losses of a limited partnership shall be allocated  
11 among the partners in the manner provided by a written partnership  
12 agreement.

13 (b) If a written partnership agreement does not provide for  
14 the allocation of profits and losses, the profits and losses shall  
15 be allocated:

16 (1) in accordance with the current percentage or other  
17 interest in the partnership stated in partnership records of the  
18 kind described by Section 153.551(a); or

19 (2) if the allocation of profits and losses is not  
20 provided for in partnership records of the kind described by  
21 Section 153.551(a), in proportion to capital accounts. (TRLPA  
22 5.03.)

23 Sec. 153.207. RIGHT TO DISTRIBUTION. Subject to Section  
24 153.210, when a partner becomes entitled to receive a distribution,  
25 the partner has with respect to the distribution the status of and  
26 is entitled to all remedies available to a creditor of the limited  
27 partnership. (TRLPA 6.06.)

1           Sec. 153.208. SHARING OF DISTRIBUTIONS. (a) A distribution  
2 of cash or another asset of a limited partnership shall be made to a  
3 partner in the manner provided by a written partnership agreement.

4           (b) If a written partnership agreement does not provide  
5 otherwise, a distribution that is a return of capital shall be made  
6 on the basis of the agreed value, as stated in the partnership  
7 records required to be maintained under Section 153.551(a), of the  
8 contribution made by each partner to the extent that the  
9 contribution has not been returned. A distribution that is not a  
10 return of capital shall be made in proportion to the allocation of  
11 profits as determined under Section 153.206.

12          (c) Unless otherwise defined by a written partnership  
13 agreement, in this section, "return of capital" means a  
14 distribution to a partner to the extent that the partner's capital  
15 account, immediately after the distribution, is less than the  
16 amount of that partner's contribution to the partnership as reduced  
17 by a prior distribution that was a return of capital. (TRLPA  
18 1.02(13), 5.04.)

19          Sec. 153.209. INTERIM DISTRIBUTIONS. Except as otherwise  
20 provided by this section and Section 153.210, a partner is entitled  
21 to receive a distribution from a limited partnership to the extent  
22 and at the time or on the occurrence of an event specified in the  
23 partnership agreement before:

24                 (1) the partner withdraws from the partnership; and

25                 (2) the winding up of the partnership business.

26 (TRLPA 6.01.)

27          Sec. 153.210. LIMITATION ON DISTRIBUTION. A limited

1 partnership may not make a distribution to a partner if,  
2 immediately after giving effect to the distribution and despite any  
3 compromise of a claim referred to by Sections 153.203 and 153.204,  
4 all liabilities of the limited partnership, other than liabilities  
5 to partners with respect to their partnership interests and  
6 liabilities for which the recourse of creditors is limited to  
7 specified property of the limited partnership, exceed the fair  
8 value of the partnership assets. The fair value of property that  
9 is subject to a liability for which recourse of creditors is limited  
10 shall be included in the partnership assets for purposes of this  
11 subsection only to the extent that the fair value of that property  
12 exceeds that liability. (TRLPA 6.07(a).)

13 [Sections 153.211-153.250 reserved for expansion]

14 SUBCHAPTER F. PARTNERSHIP INTEREST

15 Sec. 153.251. ASSIGNMENT OF PARTNERSHIP INTEREST. (a)

16 Except as otherwise provided by the partnership agreement, a  
17 partnership interest is assignable wholly or partly.

18 (b) Except as otherwise provided by the partnership  
19 agreement, an assignment of a partnership interest:

20 (1) does not dissolve a limited partnership;

21 (2) does not entitle the assignee to become, or to  
22 exercise rights or powers of, a partner; and

23 (3) entitles the assignee to be allocated income,  
24 gain, loss, deduction, credit, or similar items and to receive  
25 distributions to which the assignor was entitled to the extent  
26 those items are assigned. (TRLPA 7.02(a) (part).)

27 Sec. 153.252. RIGHTS OF ASSIGNOR. (a) Except as otherwise

1 provided by the partnership agreement, until the assignee becomes a  
2 partner, the assignor partner continues to be a partner in the  
3 limited partnership. The assignor partner may exercise any rights  
4 or powers of a partner, except to the extent those rights or powers  
5 are assigned.

6 (b) Except as otherwise provided by the partnership  
7 agreement, on the assignment by a general partner of all of the  
8 general partner's rights as a general partner, the general  
9 partner's status as a general partner may be terminated by the  
10 affirmative vote of a majority-in-interest of the limited partners.  
11 (TRLPA 7.02(a) (part).)

12 Sec. 153.253. RIGHTS OF ASSIGNEE. (a) An assignee of a  
13 partnership interest, including the partnership interest of a  
14 general partner, may become a limited partner if and to the extent  
15 that:

- 16 (1) the partnership agreement provides; or
- 17 (2) all partners consent.

18 (b) An assignee who becomes a limited partner, to the extent  
19 of the rights and powers assigned, has the rights and powers and is  
20 subject to the restrictions and liabilities of a limited partner  
21 under a partnership agreement and this code. (TRLPA 7.04(a), (b)  
22 (part).)

23 Sec. 153.254. LIABILITY OF ASSIGNEE. (a) Until an assignee  
24 of the partnership interest in a limited partnership becomes a  
25 partner, the assignee does not have liability as a partner solely as  
26 a result of the assignment.

27 (b) Unless otherwise provided by a written partnership

1 agreement, an assignee who becomes a limited partner:

2 (1) is liable for the obligations of the assignor to  
3 make contributions as provided by Sections 153.202-153.204;

4 (2) is not obligated for liabilities unknown to the  
5 assignee at the time the assignee became a limited partner and that  
6 could not be ascertained from a written partnership agreement; and

7 (3) is not liable for the obligations of the assignor  
8 under Sections 153.105, 153.112, and 153.162. (TRLPA 7.02(b),  
9 7.04(b) (part).)

10 Sec. 153.255. LIABILITY OF ASSIGNOR. Regardless of whether  
11 an assignee of a partnership interest becomes a limited partner,  
12 the assignor is not released from the assignor's liability to the  
13 limited partnership under Subchapter E and Sections 153.105,  
14 153.112, and 153.162. (TRLPA 7.04(c).)

15 Sec. 153.256. CHARGE IN PAYMENT OF JUDGMENT CREDITOR. (a)  
16 On application to a court by a judgment creditor of a partner or  
17 other owner of a partnership interest, the court may:

18 (1) charge the partnership interest of the partner or  
19 other owner with payment of the unsatisfied amount of the judgment,  
20 with interest;

21 (2) appoint a receiver for the debtor partner's share  
22 of the partnership's profits and other money payable or that  
23 becomes payable to the debtor partner with respect to the limited  
24 partnership; and

25 (3) make other orders, directions, and inquiries that  
26 the circumstances of the case require.

27 (b) To the extent that the partnership interest is charged

1 in the manner provided by Subsection (a), the judgment creditor has  
2 only the rights of an assignee of the partnership interest.

3 (c) The partnership interest charged may be:

4 (1) redeemed at any time before foreclosure; or

5 (2) in case of a sale directed by the court, and  
6 without constituting an event requiring winding up, purchased:

7 (A) by one or more of the general partners with  
8 separate property of any general partner; or

9 (B) with respect to partnership property, by one  
10 or more of the general partners whose interests are not charged, on  
11 the consent of all general partners whose interests are not charged  
12 and a majority in interest of the limited partners, excluding  
13 limited partnership interests held by a general partner whose  
14 interest is charged.

15 (d) The remedies provided by Subsection (a) are exclusive of  
16 other remedies that may exist, including remedies under laws of  
17 this state applicable to partnerships without limited partners.  
18 (TRLPA 7.03(a), (b), (c).)

19 Sec. 153.257. EXEMPTION LAWS APPLICABLE TO PARTNERSHIP  
20 INTEREST NOT AFFECTED. Section 153.256 does not deprive a partner  
21 of the benefit of an exemption law applicable to that partner's  
22 partnership interest. (TRLPA 7.03(d).)

23 [Sections 153.258-153.300 reserved for expansion]

24 SUBCHAPTER G. REPORTS

25 Sec. 153.301. PERIODIC REPORT. The secretary of state may  
26 require a domestic limited partnership or a foreign limited  
27 partnership registered to transact business in this state to file a



1 report not more than once every four years as required by this  
2 subchapter. (TRLPA 13.05(a) (part).)

3 Sec. 153.302. FORM AND CONTENTS OF REPORT. (a) The report  
4 must:

5 (1) include:

6 (A) the name of the limited partnership;

7 (B) the state or territory under the laws of  
8 which the limited partnership is formed;

9 (C) the address of the registered office of the  
10 limited partnership in this state and the name of the registered  
11 agent at that address;

12 (D) the address of the principal office in the  
13 United States where records are to be kept or made available under  
14 Sections 153.551 and 153.552; and

15 (E) the name, mailing address, and street address  
16 of the business or residence of each general partner;

17 (2) be made on a form adopted by the secretary of state  
18 for that purpose; and

19 (3) be signed on behalf of the limited partnership by  
20 at least one general partner.

21 (b) The information contained in the report must be given as  
22 of the date of the execution of the report. (TRLPA 13.05(a) (part),  
23 (b) (part).)

24 Sec. 153.303. FILING FEE. The filing fee for the report is  
25 as provided by Chapter 4. (TRLPA 13.05(b) (part).)

26 Sec. 153.304. DELIVERY OF REPORT. The report must be  
27 delivered to the secretary of state not later than the 30th day

1 after the date on which notice is mailed under Section 153.305.  
2 (TRLPA 13.05(c) (part).)

3 Sec. 153.305. ACTION BY SECRETARY OF STATE. (a) The  
4 secretary of state shall send a notice that the report required by  
5 Section 153.301 is due.

6 (b) The notice must be:

7 (1) addressed to the limited partnership; and

8 (2) mailed to:

9 (A) the registered office of the limited  
10 partnership;

11 (B) the last known address of the limited  
12 partnership as it appears on record in the office of the secretary  
13 of state; or

14 (C) any other known place of business of the  
15 limited partnership.

16 (c) The secretary of state shall include with the notice a  
17 copy of a report form to be prepared and filed as provided by this  
18 subchapter. (TRLPA 13.05(c), (d) (part).)

19 Sec. 153.306. EFFECT OF FILING REPORT. (a) If the secretary  
20 of state finds that the report complies with this subchapter, the  
21 secretary shall:

22 (1) accept the report for filing;

23 (2) acknowledge to the limited partnership the filing  
24 of the report; and

25 (3) update the records of the secretary of state's  
26 office to reflect:

27 (A) a reported change in the address of the

1 registered office or principal office, or in the business or  
2 residence address of a general partner; and

3 (B) a reported change in the name of the  
4 registered agent.

5 (b) The filing of a report under Section 153.301 does not  
6 relieve the limited partnership of the requirement to file an  
7 amendment to the certificate of formation required under Section  
8 153.051 or 153.052, except that the limited partnership is not  
9 required to file an amendment to change the information specified  
10 in Subsection (a)(3). (TRLPA 13.05(d) (part), (e).)

11 Sec. 153.307. EFFECT OF FAILURE TO FILE REPORT. (a) A  
12 domestic or foreign limited partnership that fails to file a report  
13 under Section 153.301 when the report is due forfeits the limited  
14 partnership's right to transact business in this state. A  
15 forfeiture under this section takes effect without judicial  
16 ascertainment.

17 (b) When the right to transact business has been forfeited  
18 under this section, the secretary of state shall note that the right  
19 to transact business has been forfeited and the date of forfeiture  
20 on the record kept in the secretary's office relating to the limited  
21 partnership. (TRLPA 13.06(a), (b) (part).)

22 Sec. 153.308. NOTICE OF FORFEITURE OF RIGHT TO TRANSACT  
23 BUSINESS. Notice of the forfeiture under Section 153.307 shall be  
24 mailed to the limited partnership at:

- 25 (1) the registered office of the limited partnership;  
26 (2) the last known address of the limited partnership;  
27 or

1           (3) any other place of business of the limited  
2 partnership. (TRLPA 13.06(b) (part).)

3           Sec. 153.309. EFFECT OF FORFEITURE OF RIGHT TO TRANSACT  
4 BUSINESS. (a) Unless the right of the limited partnership to  
5 transact business is revived in accordance with Section 153.310:

6           (1) the limited partnership may not maintain an  
7 action, suit, or proceeding in a court of this state; and

8           (2) a successor or assignee of the limited partnership  
9 may not maintain an action, suit, or proceeding in a court of this  
10 state on a right, claim, or demand arising from the transaction of  
11 business by the limited partnership in this state.

12          (b) The forfeiture of the right to transact business in this  
13 state does not:

14          (1) impair the validity of a contract or act of the  
15 limited partnership; or

16          (2) prevent the limited partnership from defending an  
17 action, suit, or proceeding in a court of this state.

18          (c) This section and Sections 153.307 and 153.308 do not  
19 affect the liability of a limited partner to the limited  
20 partnership. (TRLPA 13.06(c), (d).)

21          Sec. 153.310. REVIVAL OF RIGHT TO TRANSACT BUSINESS. (a) A  
22 limited partnership that forfeits the right to transact business in  
23 this state as provided by Section 153.309 may be relieved from the  
24 forfeiture by filing the required report not later than the 120th  
25 day after the date of mailing of the notice of forfeiture under  
26 Section 153.308, accompanied by the filing fees as provided by  
27 Chapter 4.

1 (b) If a limited partnership complies with Subsection (a),  
2 the secretary of state shall:

3 (1) revive the right of the limited partnership to  
4 transact business in this state;

5 (2) cancel the note regarding the forfeiture; and

6 (3) note the revival and the date of revival on the  
7 record kept in the secretary's office relating to the limited  
8 partnership. (TRLPA 13.07.)

9 Sec. 153.311. CANCELLATION OF CERTIFICATE OR REGISTRATION  
10 AFTER FORFEITURE. (a) The secretary of state may cancel the  
11 certificate of formation of a domestic limited partnership, or the  
12 registration of a foreign limited partnership, if the limited  
13 partnership:

14 (1) forfeits its right to transact business in this  
15 state under Section 153.307; and

16 (2) fails to revive that right under Section 153.310.

17 (b) Cancellation of the certificate or registration takes  
18 effect without judicial ascertainment.

19 (c) The secretary of state shall note the cancellation and  
20 the date of cancellation on the record kept in the secretary's  
21 office relating to the limited partnership.

22 (d) On cancellation, the status of the limited partnership  
23 is changed to inactive according to the records of the secretary of  
24 state. The change to inactive status does not affect the liability  
25 of a limited partner to the limited partnership. (TRLPA 13.08.)

26 Sec. 153.312. REINSTATEMENT OF CERTIFICATE OF FORMATION OR  
27 REGISTRATION. (a) A limited partnership the certificate of

1 formation or registration of which has been canceled as provided by  
2 Section 153.311 may be relieved of the cancellation by filing the  
3 report required by Section 153.301, accompanied by the filing fees  
4 provided by Chapter 4.

5 (b) If the limited partnership pays the fees required by  
6 Subsection (a), the secretary of state shall:

7 (1) reinstate the certificate or registration of the  
8 limited partnership without judicial ascertainment;

9 (2) change the status of the limited partnership to  
10 active; and

11 (3) note the reinstatement on the record kept in the  
12 secretary's office relating to the limited partnership.

13 (c) If the name of the limited partnership is not available  
14 at the time of reinstatement, the secretary of state shall require  
15 the limited partnership as a precondition to reinstatement to:

16 (1) file an amendment to the partnership's certificate  
17 of formation; or

18 (2) in the case of a foreign limited partnership,  
19 amend its application for registration to adopt an assumed name for  
20 use in this state. (TRLPA 13.09.)

21 [Sections 153.313-153.350 reserved for expansion]

22 SUBCHAPTER H. LIMITED PARTNERSHIP AS LIMITED

23 LIABILITY PARTNERSHIP

24 Sec. 153.351. REQUIREMENTS. A limited partnership is a  
25 limited liability partnership and a limited partnership if the  
26 partnership:

27 (1) registers as a limited liability partnership:

1 (A) as permitted by its partnership agreement; or

2 (B) if its partnership agreement does not include  
3 a provision for becoming a limited liability partnership, with the  
4 consent of partners required to amend its partnership agreement;

5 (2) complies with Subchapter J, Chapter 152; and

6 (3) complies with Chapter 5. (TRLPA 2.14(a).)

7 Sec. 153.352. APPLICABILITY OF OTHER REQUIREMENTS. For  
8 purposes of applying Section 152.802 to a limited partnership:

9 (1) an application to become a limited liability  
10 partnership or to withdraw a registration must be signed by at least  
11 one general partner; and

12 (2) other references to a partner mean a general  
13 partner only. (TRLPA 2.14(b).)

14 Sec. 153.353. LAW APPLICABLE TO PARTNERS. If a limited  
15 partnership is a limited liability partnership, Section 152.801  
16 applies to a general partner and to a limited partner who is liable  
17 under other provisions of this chapter for the debts or obligations  
18 of the limited partnership. (TRLPA 2.14(c).)

19 [Sections 153.354-153.400 reserved for expansion]

#### 20 SUBCHAPTER I. DERIVATIVE ACTIONS

21 Sec. 153.401. RIGHT TO BRING ACTION. A limited partner may  
22 bring an action in a court on behalf of the limited partnership to  
23 recover a judgment in the limited partnership's favor if:

24 (1) all general partners with authority to bring the  
25 action have refused to bring the action; or

26 (2) an effort to cause those general partners to bring  
27 the action is not likely to succeed. (TRLPA 10.01.)

1           . Sec. 153.402. PROPER PLAINTIFF. In a derivative action, the  
2 plaintiff must be a limited partner when the action is brought and:

3           (1) the person must have been a limited partner at the  
4 time of the transaction that is the subject of the action; or

5           (2) the person's status as a limited partner must have  
6 arisen by operation of law or under the terms of the partnership  
7 agreement from a person who was a limited partner at the time of the  
8 transaction. (TRLPA 10.02.)

9           Sec. 153.403. PLEADING. In a derivative action, the  
10 complaint must contain with particularity:

11           (1) the effort, if any, of the plaintiff to secure  
12 initiation of the action by a general partner; or

13           (2) the reasons for not making the effort. (TRLPA  
14 10.03.)

15           Sec. 153.404. SECURITY FOR EXPENSES OF DEFENDANTS. (a) In a  
16 derivative action, the court may require the plaintiff to give  
17 security for the reasonable expenses incurred or expected to be  
18 incurred by a defendant in the action, including reasonable  
19 attorney's fees.

20           (b) The court may increase or decrease at any time the  
21 amount of the security on a showing that the security provided is  
22 inadequate or excessive.

23           (c) If a plaintiff is unable to give security, the plaintiff  
24 may file an affidavit in accordance with the Texas Rules of Civil  
25 Procedure.

26           (d) Except as provided by Subsection (c), if a plaintiff  
27 fails to give the security within a reasonable time set by the



1 court, the court shall dismiss the suit without prejudice.

2 (e) The court, on final judgment for a defendant and on a  
3 finding that suit was brought without reasonable cause against the  
4 defendant, may require the plaintiff to pay reasonable expenses,  
5 including reasonable attorney's fees, to the defendant, regardless  
6 of whether security has been required. (TRLPA 10.04.)

7 Sec. 153.405. EXPENSES OF PLAINTIFF. If a derivative action  
8 is successful, wholly or partly, or if anything is received by the  
9 plaintiff because of a judgment, compromise, or settlement of the  
10 action or claim constituting a part of the action, the court may  
11 award the plaintiff reasonable expenses, including reasonable  
12 attorney's fees, and shall direct the plaintiff to remit to a party  
13 identified by the court the remainder of the proceeds received by  
14 the plaintiff. (TRLPA 10.05.)

15 [Sections 153.406-153.450 reserved for expansion]

16 SUBCHAPTER J. CANCELLATION OF CERTIFICATE OF FORMATION

17 Sec. 153.451. CERTIFICATE OF CANCELLATION. (a) A  
18 certificate of formation shall be canceled by filing a certificate  
19 of cancellation with the secretary of state in accordance with  
20 Chapter 4:

21 (1) on the completion of the winding up of the  
22 partnership business;

23 (2) when there are no limited partners; or

24 (3) subject to Subsection (b), on a merger or  
25 conversion as provided by Chapter 10.

26 (b) If a limited partnership formed under this code is not  
27 one of the surviving or resulting domestic limited partnerships or

1 other entities in a merger or conversion, the certificate of merger  
2 or conversion filed under Chapter 10 is sufficient, without a  
3 filing under this section, to cancel the certificate of formation  
4 of the nonsurviving limited partnership.

5 (c) To approve a reinstatement of a limited partnership  
6 under Section 11.202, all of the remaining partners, or another  
7 group or percentage of partners as specified by the partnership  
8 agreement, must agree in writing to reinstate and continue the  
9 business of the limited partnership. (TRLPA 2.03(a), (c).)

10 Sec. 153.452. CONTENTS OF CERTIFICATE OF CANCELLATION. A  
11 certificate of cancellation must contain:

12 (1) the name of the limited partnership;

13 (2) the date of the filing of the partnership's  
14 certificate of formation;

15 (3) the reason for filing the certificate of  
16 cancellation;

17 (4) the future effective date or a certain time of  
18 cancellation if cancellation is not effective on the filing of the  
19 certificate; and

20 (5) other proper information as determined by the  
21 person filing the certificate of cancellation. (TRLPA 2.03(b).)

22 [Sections 153.453-153.500 reserved for expansion]

23 SUBCHAPTER K. SUPPLEMENTAL WINDING UP AND TERMINATION

24 PROVISIONS

25 Sec. 153.501. CONTINUATION WITHOUT WINDING UP. (a) The  
26 limited partnership may cancel an event requiring winding up as  
27 specified in Section 11.051(1) or (3) if, not later than the 90th

1 day after the event, all remaining partners, or another group or  
2 percentage of partners as specified by the partnership agreement,  
3 agree in writing to continue the business of the limited  
4 partnership.

5 (b) The limited partnership may revoke an event requiring  
6 winding up as specified in Section 11.058(2) if:

7 (1) there remains at least one general partner and the  
8 partnership agreement permits the business of the limited  
9 partnership to be carried on by the remaining general partners and  
10 those remaining general partners carry on the business; or

11 (2) not later than one year after the event, all  
12 remaining partners, or another group or percentage of partners  
13 specified in the partnership agreement:

14 (A) agree in writing to continue the business of  
15 the limited partnership in writing; and

16 (B) to the extent that they desire or if there are  
17 no remaining general partners, agree to the appointment of one or  
18 more new general partners.

19 (c) The appointment of one or more new general partners  
20 under Subsection (b)(2)(B) is effective from the date of  
21 withdrawal.

22 (d) To approve a revocation under Section 11.151 by a  
23 limited partnership of a voluntary decision to wind up as specified  
24 in Section 11.058(1), prior to filing the certificate of  
25 cancellation required by Section 153.451, all remaining partners,  
26 or another group or percentage of partners as specified by the  
27 partnership agreement, must agree in writing to revoke the

1 voluntary decision to wind up and continue the business of the  
2 limited partnership. (TRLPA 8.01 (part).)

3 Sec. 153.502. WINDING UP PROCEDURES. (a) Except as  
4 provided by the partnership agreement, the winding up of the  
5 partnership's affairs shall be accomplished by:

6 (1) the general partners;

7 (2) if there are no general partners, the limited  
8 partners or a person chosen by the limited partners; or

9 (3) a person appointed by the court to carry out the  
10 winding up under Subsection (b).

11 (b) On application of a partner or a partner's legal  
12 representative or transferee, a court, on cause shown, may wind up  
13 the limited partnership's affairs and, in connection with the  
14 winding up, may appoint a person to carry out the liquidation and  
15 may make all other orders, directions, and inquiries that the  
16 circumstances require.

17 (c) Section 11.052(a)(2) shall not be applicable to a  
18 limited partnership. (TRLPA 8.04(a); New.)

19 Sec. 153.503. POWERS OF PERSON CONDUCTING WIND UP. (a)  
20 After an event requiring the winding up of a limited partnership and  
21 until the filing of a certificate of cancellation as provided by  
22 Sections 153.451 and 153.452, unless a written partnership  
23 agreement provides otherwise, a person winding up the limited  
24 partnership's business in the name of and on behalf of the limited  
25 partnership may take the actions specified in Sections 11.052 and  
26 11.053.

27 (b) The acts described by Subsection (a) do not create a

1 liability for a limited partner that did not exist before an action  
2 to wind up the business of the partnership was taken. (TRLPA  
3 8.04(b), (c).)

4       Sec. 153.504. DISPOSITION OF ASSETS. On the winding up of a  
5 limited partnership, its assets shall be paid or transferred as  
6 follows:

7           (1) to the extent otherwise permitted by law, to  
8 creditors, including partners who are creditors other than solely  
9 because of the application of Section 153.207 for the payment or the  
10 making of reasonable provision for payment to satisfy the  
11 liabilities of the limited partnership;

12           (2) unless otherwise provided by the partnership  
13 agreement, to partners and former partners to satisfy the  
14 partnership's liability for distributions under Section 153.111 or  
15 153.209; and

16           (3) unless otherwise provided by the partnership  
17 agreement, to partners first for the return of their capital and  
18 second with respect to their partnership interests, in the  
19 proportions provided by Sections 153.208(a) and (b). (TRLPA 8.05.)

20           [Sections 153.505-153.550 reserved for expansion]

21           SUBCHAPTER L. MISCELLANEOUS PROVISIONS

22       Sec. 153.551. RECORDS. (a) A domestic limited partnership  
23 shall maintain the following records in its principal office in the  
24 United States or make the records available in that office not later  
25 than the fifth day after the date on which a written request under  
26 Section 153.552(a) is received:

27           (1) a current list that states:

1 (A) the name and mailing address of each partner,  
2 separately identifying in alphabetical order the general partners  
3 and the limited partners;

4 (B) the last known street address of the business  
5 or residence of each general partner;

6 (C) the percentage or other interest in the  
7 partnership owned by each partner; and

8 (D) if one or more classes or groups are  
9 established under the partnership agreement, the names of the  
10 partners who are members of each specified class or group;

11 (2) a copy of:

12 (A) the limited partnership's federal, state,  
13 and local information or income tax returns for each of the  
14 partnership's six most recent tax years;

15 (B) the partnership agreement and certificate of  
16 formation; and

17 (C) all amendments or restatements;

18 (3) copies of any document that creates, in the manner  
19 provided by the partnership agreement, classes or groups of  
20 partners;

21 (4) an executed copy of any powers of attorney under  
22 which the partnership agreement, certificate of formation, and all  
23 amendments or restatements to the agreement and certificate have  
24 been executed;

25 (5) unless contained in the written partnership  
26 agreement, a written statement of:

27 (A) the amount of the cash contribution and a

1 description and statement of the agreed value of any other  
2 contribution made by each partner;

3 (B) the amount of the cash contribution and a  
4 description and statement of the agreed value of any other  
5 contribution that the partner has agreed to make in the future as an  
6 additional contribution;

7 (C) the date on which additional contributions  
8 are to be made or the date of events requiring additional  
9 contributions to be made;

10 (D) events requiring the limited partnership to  
11 be dissolved and its affairs wound up; and

12 (E) the date on which each partner in the limited  
13 partnership became a partner; and

14 (6) books and records of the accounts of the limited  
15 partnership.

16 (b) A limited partnership shall maintain its records in  
17 written form or in another form capable of being converted to  
18 written form in a reasonable time.

19 (c) A limited partnership shall keep in its registered  
20 office in this state and make available to a partner on reasonable  
21 request the street address of its principal office in the United  
22 States in which the records required by this section are  
23 maintained. (TRLPA 1.07(a), (b), (c).)

24 Sec. 153.552. EXAMINATION OF RECORDS AND INFORMATION. (a)  
25 On written request stating a proper purpose, a partner or an  
26 assignee of a partnership interest may examine and copy, in person  
27 or through a representative, records required to be kept under

1 Section 153.551 and other information regarding the business,  
2 affairs, and financial condition of the limited partnership as is  
3 just and reasonable for the person to examine and copy.

4 (b) The records requested under Subsection (a) may be  
5 examined and copied at a reasonable time and at the partner's sole  
6 expense.

7 (c) On written request by a partner or an assignee of a  
8 partnership interest, the partnership shall provide to the  
9 requesting partner or assignee without charge copies of:

10 (1) the partnership agreement and certificate of  
11 formation and all amendments or restatements; and

12 (2) any tax return described by Section 153.551(a)(2).

13 (d) A request made under Subsection (c) must be made to:

14 (1) the person who is designated to receive the  
15 request in the partnership agreement at the address designated in  
16 the partnership agreement; or

17 (2) if there is no designation, a general partner at  
18 the partnership's principal office in the United States. (TRLPA  
19 1.07(d), (e).)

20 Sec. 153.553. EXECUTION OF CERTAIN FILINGS. (a) Each  
21 certificate required by this code to be filed by a limited  
22 partnership with the secretary of state shall be executed as  
23 follows:

24 (1) an initial certificate of formation must be signed  
25 as provided in Section 3.004(b)(1), except for an initial  
26 certificate of formation signed by a person under Section  
27 153.106(1);



1           (2) a certificate of amendment or restated certificate  
2 of formation must be signed by at least one general partner and by  
3 each other general partner designated in the certificate of  
4 amendment as a new general partner, unless signed and filed by a  
5 person under Section 153.052(b), 153.052(c), or 153.106(1), but the  
6 certificate of amendment need not be signed by a withdrawing  
7 general partner;

8           (3) a certificate of cancellation must be signed by  
9 all general partners participating in the winding up of the limited  
10 partnership's business or, if no general partners are winding up  
11 the limited partnership's business, by all nonpartner liquidators  
12 or, if the limited partners are winding up the limited  
13 partnership's business, by a majority-in-interest of the limited  
14 partners;

15           (4) a certificate of merger filed on behalf of a  
16 domestic limited partnership must be signed as provided by Chapter  
17 10;

18           (5) a certificate filed under Section 10.251 must be  
19 signed by the person designated by the court; and

20           (6) a certificate of correction must be signed by at  
21 least one general partner.

22           (b) Any person may sign a certificate or partnership  
23 agreement or amendment or restated certificate by an attorney in  
24 fact. A power of attorney relating to the signing of a certificate  
25 or partnership agreement or amendment or restated certificate by an  
26 attorney in fact:

27           (1) is not required to be sworn to, verified, or

1 acknowledged;

2 (2) is not required to be filed with the secretary of  
3 state; and

4 (3) shall be retained with the partnership records  
5 under Sections 153.551 and 153.552.

6 (c) The execution of a certificate by a general partner or  
7 the execution of a written statement by a person under Section  
8 153.106(2) is an oath or affirmation, under a penalty of perjury,  
9 that, to the best of the executing party's knowledge and belief, the  
10 facts stated in the certificate or statement are true. (TRLPA  
11 2.04.)

12 Sec. 153.554. EXECUTION, AMENDMENT, OR CANCELLATION BY  
13 JUDICIAL ORDER. (a) If a person fails or refuses to execute or file  
14 a certificate as required by this chapter or Title 1 or to execute a  
15 partnership agreement, another person adversely affected by the  
16 failure or refusal may petition a court to direct the execution or  
17 filing of the certificate or the execution of the partnership  
18 agreement, as appropriate.

19 (b) If the court finds that the execution or filing of the  
20 certificate is proper and that a person required to execute or file  
21 the certificate has failed or refused to execute or file the  
22 certificate, the court shall order the secretary of state to record  
23 an appropriate certificate.

24 (c) The judicial remedy described by Subsection (b) is not a  
25 limit on the rights of a person to file a written statement under  
26 Section 153.106(2).

27 (d) If the court finds that the partnership agreement should

1 be executed and that a person required to execute the partnership  
2 agreement has failed or refused to execute the agreement, the court  
3 shall enter an order granting appropriate relief.

4 (e) If a court enters an order in favor of the adversely  
5 affected person requesting relief under this section, the court  
6 shall award to that person reasonable expenses, including  
7 reasonable attorney's fees. (TRLPA 2.05.)

8 Sec. 153.555. PERMITTED TRANSFER IN CONNECTION WITH  
9 RACETRACK LICENSE. The following transfer relating to a limited  
10 partnership is not a prohibited transfer that violates Section  
11 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil  
12 Statutes):

13 (1) a transfer by a general partnership of its assets  
14 to a limited partnership, the corporate general partner of which is  
15 controlled by the partners of the general partnership; or

16 (2) a transfer by a limited partnership of the  
17 beneficial use of or interest in any of its rights, privileges, or  
18 assets to a local development corporation incorporated before  
19 January 31, 1993, under Subchapter D, Chapter 431, Transportation  
20 Code. (TRLPA 7.06.)

21 CHAPTER 154. PROVISIONS APPLICABLE TO BOTH GENERAL  
22 AND LIMITED PARTNERSHIPS

23 SUBCHAPTER A. PARTNERSHIP INTERESTS

24 Sec. 154.001. NATURE OF PARTNER'S PARTNERSHIP INTEREST. (a)  
25 A partner's partnership interest is personal property for all  
26 purposes.

27 (b) A partner's partnership interest may be community

1 property under applicable law.

2 (c) A partner is not a co-owner of partnership property.  
3 (TRPA 5.01, 5.02(a); TRLPA 7.01.)

4 Sec. 154.002. TRANSFER OF INTEREST IN PARTNERSHIP PROPERTY  
5 PROHIBITED. A partner does not have an interest that can be  
6 transferred, voluntarily or involuntarily, in partnership  
7 property. (TRPA 5.01; TRLPA 7.01.)

8 [Sections 154.003-154.100 reserved for expansion]

9 SUBCHAPTER B. PARTNERSHIP AGREEMENT

10 Sec. 154.101. CLASS OR GROUP OF PARTNERS. (a) A written  
11 partnership agreement may establish or provide for the future  
12 creation of additional classes or groups of one or more partners  
13 that have certain express relative rights, powers, and duties,  
14 including voting rights. The future creation of additional classes  
15 or groups may be expressed in the partnership agreement or at the  
16 time of creation of the class or group.

17 (b) The rights, powers, or duties of a class or group of  
18 partners may be senior to those partners of an existing class or  
19 group. (TRPA 4.01(1); TRLPA 3.02(a), 4.05(a).)

20 Sec. 154.102. PROVISIONS RELATING TO VOTING. A written  
21 partnership agreement that grants or provides for granting a right  
22 to vote to a partner may contain a provision relating to:

23 (1) giving notice of the time, place, or purpose of a  
24 meeting at which a matter is to be voted on by the partners;

25 (2) waiver of notice;

26 (3) action by consent without a meeting;

27 (4) the establishment of a record date;

- 1           (5) quorum requirements;  
2           (6) voting in person or by proxy; or  
3           (7) other matters relating to the exercise of the  
4 right to vote. (TRPA 4.01(m); TRLPA 3.02(b), 4.05(b).)

5           Sec. 154.103. NOTICE OF ACTION BY CONSENT WITHOUT A  
6 MEETING. (a) Prompt notice of the taking of an action under a  
7 partnership agreement that may be taken without a meeting by  
8 consent of fewer than all of the partners shall be given to a  
9 partner who has not given written consent to the action.

10           (b) For purposes of this section, the "taking of an action"  
11 includes:

- 12           (1) amending the partnership agreement; or  
13           (2) creating under the partnership agreement a class  
14 of partners that did not previously exist. (TRPA 4.01(n); TRLPA  
15 3.02(c), (d).)

16           [Sections 154.104-154.200 reserved for expansion]

17           SUBCHAPTER C. PARTNERSHIP TRANSACTIONS AND RELATIONSHIPS

18           Sec. 154.201. BUSINESS TRANSACTIONS BETWEEN PARTNER AND  
19 PARTNERSHIP. Except as otherwise provided by the partnership  
20 agreement, a partner may lend money to and transact other business  
21 with the partnership. Subject to other applicable law, a partner  
22 has the same rights and obligations with respect to those matters as  
23 a person who is not a partner. (TRPA 4.01(k); TRLPA 1.10.)

24           Sec. 154.202. EFFECT OF PARTNER CHANGE ON RELATIONSHIP  
25 BETWEEN PARTNERSHIP AND CREDITORS. The relationships between a  
26 partnership and its creditors are not affected by the:

- 27           (1) withdrawal of a partner; or

1 (2) addition of a new partner. (TRPA 2.06(c).)

2 Sec. 154.203. DISTRIBUTIONS IN KIND. (a) Except as  
3 provided by the partnership agreement, a partner, regardless of the  
4 nature of the partner's contribution, is not entitled to demand or  
5 receive from a partnership a distribution in any form other than  
6 cash.

7 (b) Except as provided by the partnership agreement, a  
8 partner may not be compelled to accept a disproportionate  
9 distribution of an asset in kind from a partnership to the extent  
10 that the percentage portion of assets distributed to the partner  
11 exceeds the percentage of those assets that equals the percentage  
12 in which the partner shares in distributions from the partnership.  
13 (TRPA 4.02; TRLPA 6.05.)

14 TITLE 5. REAL ESTATE INVESTMENT TRUSTS

15 CHAPTER 200. REAL ESTATE INVESTMENT TRUSTS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 200.001. DEFINITION. In this chapter, "real estate  
18 investment trust" means an unincorporated trust:

19 (1) formed by one or more trust managers under this  
20 chapter and Chapter 3; and

21 (2) managed under this chapter. (TREITA 2.10.)

22 Sec. 200.002. APPLICABILITY OF CHAPTER. (a) The provisions  
23 of Chapters 20 and 21 govern a matter to the extent that this  
24 chapter or Title 1 does not govern the matter.

25 (b) An unincorporated trust that does not meet the  
26 requirements of this chapter is an unincorporated association.  
27 (TREITA 28.10(A) (part), (B).)

1           Sec. 200.003. CONFLICT WITH OTHER LAW. In case of conflict  
2 between this chapter and Chapters 20 and 21, this chapter controls.  
3 Chapters 20 and 21 do not control over this chapter merely because a  
4 provision of Chapter 20 or 21 is more or less extensive,  
5 restrictive, or detailed than a similar provision of this chapter.  
6 (TREITA 28.10(A) (part).)

7           Sec. 200.004. ULTRA VIRES ACTS. (a) Lack of capacity of a  
8 real estate investment trust may not be the basis of any claim or  
9 defense at law or in equity.

10           (b) An act of a real estate investment trust or a transfer of  
11 property by or to a real estate investment trust is not invalid  
12 because the act or transfer was:

13           (1) beyond the scope of the purpose or purposes of the  
14 real estate investment trust as expressed in the real estate  
15 investment trust's certificate of formation; or

16           (2) inconsistent with a limitation on the authority of  
17 an officer or trust manager to exercise a statutory power of the  
18 real estate investment trust, as that limitation is expressed in  
19 the real estate investment trust's certificate of formation.

20           (c) The fact that an act or transfer is beyond the scope of  
21 the expressed purpose or purposes of the real estate investment  
22 trust or is inconsistent with an expressed limitation on the  
23 authority of an officer or trust manager may be asserted in a  
24 proceeding:

25           (1) by a shareholder against the real estate  
26 investment trust to enjoin the performance of an act or the transfer  
27 of property by or to the real estate investment trust; or

1           (2) by the real estate investment trust, acting  
2 directly or through a receiver, trustee, or other legal  
3 representative, or through shareholders in a representative suit,  
4 against an officer or trust manager or former officer or trust  
5 manager of the real estate investment trust for exceeding that  
6 person's authority.

7           (d) If the unauthorized act or transfer sought to be  
8 enjoined under Subsection (c)(1) is being or is to be performed or  
9 made under a contract to which the real estate investment trust is a  
10 party and if each party to the contract is a party to the  
11 proceeding, the court may set aside and enjoin the performance of  
12 the contract. The court may award to the real estate investment  
13 trust or to another party to the contract, as appropriate,  
14 compensation for loss or damage resulting from the action of the  
15 court in setting aside and enjoining the performance of the  
16 contract, excluding loss of anticipated profits. (TREITA 3.20.)

17           Sec. 200.005. SUPPLEMENTARY POWERS OF REAL ESTATE  
18 INVESTMENT TRUST. (a) Subject to Section 2.113(a) and in addition  
19 to the powers specified in Section 2.101, a real estate investment  
20 trust may engage in activities mandated or authorized by:

21           (1) provisions of the Internal Revenue Code that are  
22 related to or govern real estate investment trusts; and

23           (2) regulations adopted under the Internal Revenue  
24 Code.

25           (b) This section does not authorize a real estate investment  
26 trust or an officer or trust manager of a real estate investment  
27 trust to exercise a power in a manner inconsistent with a limitation



1 on the purposes or powers of the real estate investment trust  
2 contained in:

- 3 (1) the trust's certificate of formation;
- 4 (2) this code; or
- 5 (3) another law of this state. (TREITA 6.10(A)  
6 (part), (B) (part).)

7 Sec. 200.006. REQUIREMENT THAT FILING INSTRUMENT BE SIGNED  
8 BY OFFICER. Unless otherwise provided by this chapter, a filing  
9 instrument of a real estate investment trust may be signed by an  
10 officer of the real estate investment trust. (TREITA 22.40(A)  
11 (part), 22.70(D) (part), 23.40(A) (part).)

12 [Sections 200.007-200.050 reserved for expansion]

#### 13 SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

14 Sec. 200.051. DECLARATION OF TRUST. For purposes of this  
15 code, the certificate of formation of a real estate investment  
16 trust is a declaration of trust. The certificate of formation may be  
17 titled "declaration of trust" or "certificate of formation."  
18 (New.)

19 Sec. 200.052. NO PROPERTY RIGHT IN CERTIFICATE OF  
20 FORMATION. A shareholder of a real estate investment trust does not  
21 have a vested property right resulting from the certificate of  
22 formation, including a provision in the certificate of formation  
23 relating to the management, control, capital structure, dividend  
24 entitlement, purpose, or duration of the real estate investment  
25 trust. (TREITA 22.10(B).)

26 Sec. 200.053. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE  
27 OF FORMATION. (a) To adopt an amendment to the certificate of

1 formation of a real estate investment trust as provided by  
2 Subchapter B, Chapter 3, the trust managers shall:

3 (1) adopt a resolution stating the proposed amendment;  
4 and

5 (2) follow the procedures prescribed by Sections  
6 200.054-200.056.

7 (b) The resolution may incorporate the proposed amendment  
8 in a restated certificate of formation that complies with Section  
9 3.059. (TREITA 22.20.)

10 Sec. 200.054. ADOPTION OF AMENDMENT BY TRUST MANAGERS. If a  
11 real estate investment trust does not have any issued and  
12 outstanding shares, the trust managers may adopt a proposed  
13 amendment to the real estate investment trust's certificate of  
14 formation by resolution without shareholder approval. (TREITA  
15 22.20(A) (part).)

16 Sec. 200.055. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a  
17 real estate investment trust has issued and outstanding shares:

18 (1) a resolution described by Section 200.053 must  
19 also direct that the proposed amendment be submitted to a vote of  
20 the shareholders at a meeting; and

21 (2) the shareholders must approve the proposed  
22 amendment in the manner provided by Section 200.056. (TREITA  
23 22.20(A) (part).)

24 Sec. 200.056. NOTICE OF AND MEETING TO CONSIDER PROPOSED  
25 AMENDMENT. (a) Each shareholder of record entitled to vote shall be  
26 given written notice containing the proposed amendment or a summary  
27 of the changes to be effected within the time and in the manner

1 provided by this code for giving notice of meetings to  
2 shareholders. If the proposed amendment is to be considered at an  
3 annual meeting, the proposed amendment or summary may be included  
4 in the notice required to be provided for an annual meeting.

5 (b) At the meeting, the proposed amendment shall be adopted  
6 only on receiving the affirmative vote of shareholders entitled to  
7 vote required by Section 200.261.

8 (c) An unlimited number of amendments may be submitted for  
9 adoption by the shareholders at a meeting. (TREITA 22.20(A)  
10 (part), (B).)

11 Sec. 200.057. ADOPTION OF RESTATED CERTIFICATE OF  
12 FORMATION. (a) A real estate investment trust may adopt a restated  
13 certificate of formation as provided by Subchapter B, Chapter 3, by  
14 following the same procedures to amend its certificate of formation  
15 under Sections 200.053-200.056, except that shareholder approval  
16 is not required if an amendment is not adopted.

17 (b) If shares of the real estate investment trust have not  
18 been issued and the restated certificate of formation is adopted by  
19 the trust managers, the majority of the trust managers may sign the  
20 restated certificate of formation on behalf of the real estate  
21 investment trust. (TREITA 22.70(A) (part), (D) (part).)

22 Sec. 200.058. BYLAWS. (a) The trust managers of a real  
23 estate investment trust shall adopt initial bylaws.

24 (b) The bylaws may contain provisions for the regulation and  
25 management of the affairs of the real estate investment trust that  
26 are consistent with law and the real estate investment trust's  
27 certificate of formation.

1           (c) The trust managers of a real estate investment trust may  
2 amend or repeal bylaws or adopt new bylaws unless:

3           (1) the real estate investment trust's certificate of  
4 formation or this chapter wholly or partly reserves the power  
5 exclusively to the real estate investment trust's shareholders; or

6           (2) in amending, repealing, or adopting a bylaw, the  
7 shareholders expressly provide that the trust managers may not  
8 amend, repeal, or readopt that bylaw. (TREITA 9.10(A), (B).)

9           Sec. 200.059. DUAL AUTHORITY. Unless the certificate of  
10 formation or a bylaw adopted by the shareholders provides otherwise  
11 as to all or a part of a real estate investment trust's bylaws, the  
12 shareholders of a real estate investment trust may amend, repeal,  
13 or adopt the bylaws of the real estate investment trust even if the  
14 bylaws may also be amended, repealed, or adopted by the trust  
15 managers of the real estate investment trust. (TREITA 9.10(C).)

16           Sec. 200.060. ORGANIZATION MEETING. (a) After the real  
17 estate investment trust has been formed, the initial trust managers  
18 of the real estate investment trust shall hold an organization  
19 meeting, at the call of a majority of those trust managers, for the  
20 purpose of adopting bylaws, electing officers, and transacting  
21 other business.

22           (b) Not later than the third day before the date of the  
23 meeting, the initial trust managers calling the meeting shall send  
24 notice of the time and place of the meeting to the other initial  
25 trust managers named in the certificate of formation. (TREITA  
26 3.10(C).)

27           [Sections 200.061-200.100 reserved for expansion]

## 1 SUBCHAPTER C. SHARES

2 Sec. 200.101. NUMBER. A real estate investment trust may  
3 issue the number of shares stated in the real estate investment  
4 trust's certificate of formation. (TREITA 3.10(A) (part).)

5 Sec. 200.102. CLASSIFICATION OF SHARES. A real estate  
6 investment trust may provide in the real estate investment trust's  
7 certificate of formation:

8 (1) that a specified class of shares is preferred over  
9 another class of shares as to its distributive share of the assets  
10 on voluntary or involuntary liquidation of the real estate  
11 investment trust;

12 (2) the amount of a preference described by  
13 Subdivision (1);

14 (3) that a specified class of shares may be redeemed at  
15 the option of the real estate investment trust or of the holders of  
16 the shares;

17 (4) the terms and conditions of a redemption of shares  
18 described by Subdivision (3), including the time and price of  
19 redemption;

20 (5) that a specified class of shares may be converted  
21 into shares of one or more other classes;

22 (6) the terms and conditions of a conversion described  
23 by Subdivision (5);

24 (7) that a holder of a specified security issued or to  
25 be issued by the real estate investment trust has voting or other  
26 rights authorized by law; and

27 (8) for other preferences, rights, restrictions,

1 including restrictions on transferability, and qualifications  
2 consistent with law. (TREITA 3.30(A) (part).)

3       Sec. 200.103. CLASSES OF SHARES ESTABLISHED BY TRUST  
4 MANAGERS. (a) A real estate investment trust may provide in the  
5 real estate investment trust's certificate of formation that the  
6 trust managers may classify or reclassify any unissued shares by  
7 setting or changing the preferences, conversion or other rights,  
8 voting powers, restrictions, limitations as to dividends,  
9 qualifications, or terms or conditions of redemption of the shares.

10       (b) Before issuing shares, the trust managers who perform as  
11 authorized by the certificate of formation an action described by  
12 Subsection (a) must file with the county clerk of the county of the  
13 principal place of business of the real estate investment trust a  
14 statement of designation that contains:

15           (1) a description of the shares, including the  
16 preferences, conversion and other rights, voting powers,  
17 restrictions, limitations as to dividends, qualifications, and  
18 terms and conditions of redemption, as set or changed by the trust  
19 managers; and

20           (2) a statement that the shares have been classified  
21 or reclassified by the trust managers as authorized by the  
22 certificate of formation. (TREITA 3.30(A) (part), (B).)

23       Sec. 200.104. ISSUANCE OF SHARES. (a) A real estate  
24 investment trust may issue shares for consideration if authorized  
25 by the trust managers.

26       (b) Shares may not be issued until the consideration,  
27 determined in accordance with this subchapter, has been paid to the

1 real estate investment trust or to another entity of which all of  
2 the outstanding ownership interests are directly or indirectly  
3 owned by the real estate investment trust. When the consideration  
4 is paid:

5 (1) the shares are considered to be issued;

6 (2) the shareholder entitled to receive the shares is  
7 a shareholder with respect to the shares; and

8 (3) the shares are considered fully paid and  
9 nonassessable. (TREITA 7.30(A) (part), (B) (part).)

10 Sec. 200.105. TYPES OF CONSIDERATION FOR ISSUANCE OF  
11 SHARES. Shares with or without par value may be issued by a real  
12 estate investment trust for the following types of consideration:

13 (1) a tangible or intangible benefit to the real  
14 estate investment trust;

15 (2) cash;

16 (3) a promissory note;

17 (4) services performed or a contract for services to  
18 be performed;

19 (5) a security of the real estate investment trust or  
20 any other organization; and

21 (6) any other property of any kind or nature. (TREITA  
22 7.30(B) (part).)

23 Sec. 200.106. DETERMINATION OF CONSIDERATION FOR SHARES.  
24 Consideration to be received by a real estate investment trust for  
25 shares shall be determined by the trust managers. (TREITA 7.30(A)  
26 (part).)

27 Sec. 200.107. AMOUNT OF CONSIDERATION FOR ISSUANCE OF

1 SHARES WITH PAR VALUE. Consideration to be received by a real estate  
2 investment trust for the issuance of shares with par value may not  
3 be less than the par value of the shares. (TREITA 7.30(A) (part).)

4 Sec. 200.108. VALUE OF CONSIDERATION. In the absence of  
5 fraud in the transaction, the judgment of the trust managers is  
6 conclusive in determining the value of the consideration received  
7 for the shares. (TREITA 7.30(C).)

8 Sec. 200.109. LIABILITY OF ASSIGNEE OR TRANSFEREE. An  
9 assignee or transferee of certificated shares, uncertificated  
10 shares, or a subscription for shares in good faith and without  
11 knowledge that full consideration for the shares or subscription  
12 has not been paid may not be held personally liable to the real  
13 estate investment trust or a creditor of the real estate investment  
14 trust for an unpaid portion of the consideration. (TREITA  
15 8.10(C).)

16 Sec. 200.110. SUBSCRIPTIONS. (a) A real estate investment  
17 trust may accept a subscription by notifying the subscriber in  
18 writing.

19 (b) A subscription to purchase shares in a real estate  
20 investment trust that is in the process of being formed is  
21 irrevocable for six months if the subscription is in writing and  
22 signed by the subscriber unless the subscription provides for a  
23 longer or shorter period or all of the other subscribers agree to  
24 the revocation of the subscription.

25 (c) A written subscription entered into after the real  
26 estate investment trust is formed is a contract between the  
27 subscriber and the real estate investment trust. (TREITA 7.10(A),



1 (C).)

2           Sec. 200.111. PREFORMATION SUBSCRIPTION. (a) A real estate  
3 investment trust may determine the payment terms of a preformation  
4 subscription unless the payment terms are specified by the  
5 subscription. The payment terms may authorize payment in full on  
6 acceptance or by installments.

7           (b) Unless the subscription provides otherwise, a real  
8 estate investment trust shall make calls placed to all subscribers  
9 of similar interests for payment on preformation subscriptions  
10 uniform as far as practicable.

11           (c) After the real estate investment trust is formed, if a  
12 subscriber fails to pay any installment or call when due, the real  
13 estate investment trust may:

14                   (1) collect in the same manner as any other debt the  
15 amount due on any unpaid preformation subscription; or

16                   (2) forfeit the subscription if the installment or  
17 call remains unpaid for 20 days after written notice to the  
18 subscriber.

19           (d) Although the forfeiture of a subscription terminates  
20 all the rights and obligations of the subscriber, the real estate  
21 investment trust may retain any amount previously paid on the  
22 subscription. (TREITA 7.10(D).)

23           Sec. 200.112. COMMITMENT IN CONNECTION WITH PURCHASE OF  
24 SHARES. (a) A person who contemplates the acquisition of shares in  
25 a real estate investment trust may commit to act in a specified  
26 manner with respect to the shares after the acquisition, including  
27 the voting of the shares or the retention or disposition of the

1 shares. To be binding, the commitment must be in writing and be  
2 signed by the person acquiring the shares.

3 (b) A written commitment entered into under Subsection (a)  
4 is a contract between the shareholder and the real estate  
5 investment trust. (New.)

6 Sec. 200.113. SUPPLEMENTAL REQUIRED RECORDS. In addition to  
7 the books and records required to be kept under Section 3.151, a  
8 real estate investment trust must keep at its principal office or  
9 place of business, or at the office of its transfer agent or  
10 registrar, a record of the number of shares held by each  
11 shareholder. (TREITA 18.10(A) (part).)

12 [Sections 200.114-200.150 reserved for expansion]

13 SUBCHAPTER D. SHAREHOLDER RIGHTS AND RESTRICTIONS

14 Sec. 200.151. REGISTERED HOLDERS AS OWNERS. Except as  
15 otherwise provided by this code and subject to Chapter 8, Business &  
16 Commerce Code, a real estate investment trust may consider the  
17 person registered as the owner of a share in the share transfer  
18 records of the real estate investment trust at a particular time,  
19 including a record date set under Section 6.102, as the owner of  
20 that share at that time for purposes of:

- 21 (1) voting the share;  
22 (2) receiving distributions on the share;  
23 (3) transferring the share;  
24 (4) receiving notice, exercising rights of dissent and  
25 appraisal, exercising or waiving a preemptive right, or giving  
26 proxies with respect to that share; or  
27 (5) entering into agreements with respect to that

1 share in accordance with Section 6.251 or 6.252 or with this  
2 subchapter. (TREITA 11.20(A).)

3           Sec. 200.152. NO STATUTORY PREEMPTIVE RIGHT UNLESS  
4 SPECIFICALLY PROVIDED BY CERTIFICATE OF FORMATION. A shareholder of  
5 a real estate investment trust does not have a preemptive right to  
6 acquire securities except to the extent specifically provided by  
7 the certificate of formation. (TREITA 3.30(A) (part).)

8           Sec. 200.153. CHARACTERIZATION AND TRANSFER OF SHARES AND  
9 OTHER SECURITIES. Except as otherwise provided by this code, the  
10 shares and other securities of a real estate investment trust are:

- 11           (1) personal property for all purposes; and  
12           (2) transferable in accordance with Chapter 8,  
13 Business & Commerce Code. (TREITA 7.40(A).)

14           Sec. 200.154. RESTRICTION ON TRANSFER OF SHARES AND OTHER  
15 SECURITIES. (a) A restriction on the transfer or registration of  
16 transfer of a security may be imposed by:

- 17           (1) the real estate investment trust's certificate of  
18 formation;  
19           (2) the real estate investment trust's bylaws;  
20           (3) a written agreement among two or more holders of  
21 the securities; or

22           (4) a written agreement among one or more holders of  
23 the securities and the real estate investment trust if:

24           (A) the real estate investment trust files a copy  
25 of the agreement at the principal place of business or registered  
26 office of the real estate investment trust; and

27           (B) the copy of the agreement is subject to the

1 same right of examination by a shareholder of the real estate  
2 investment trust, in person or by agent, attorney, or accountant,  
3 as the books and records of the real estate investment trust.

4 (b) A restriction imposed under Subsection (a) is not valid  
5 with respect to a security issued before the restriction has been  
6 adopted, unless the holder of the security voted in favor of the  
7 restriction or is a party to the agreement imposing the  
8 restriction. (TREITA 7.40(B).)

9 Sec. 200.155. VALID RESTRICTION ON TRANSFER.

10 Notwithstanding Sections 200.154 and 200.157, a restriction placed  
11 on the transfer or registration of transfer of a security of a real  
12 estate investment trust is valid if the restriction reasonably:

13 (1) obligates the holder of the restricted security to  
14 offer a person, including the real estate investment trust or other  
15 holders of securities of the real estate investment trust, an  
16 opportunity to acquire the restricted security within a reasonable  
17 time before the transfer;

18 (2) obligates the real estate investment trust, to the  
19 extent provided by this code, or another person to purchase a  
20 security that is the subject of an agreement relating to the  
21 purchase and sale of the restricted security;

22 (3) requires the real estate investment trust or the  
23 holders of a class of the real estate investment trust's securities  
24 to consent to a proposed transfer of the restricted security or to  
25 approve the proposed transferee of the restricted security for the  
26 purpose of preventing a violation of law;

27 (4) prohibits the transfer of the restricted security

1 to a designated person or group of persons and the designation is  
2 not manifestly unreasonable; or

3 (5) maintains a tax advantage to the real estate  
4 investment trust, including maintaining its status as a real estate  
5 investment trust under the relevant provisions of the Internal  
6 Revenue Code and regulations adopted under the Internal Revenue  
7 Code.. (TREITA 7.40(E).)

8 Sec. 200.156. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF  
9 SHARES OR OTHER SECURITIES. (a) A real estate investment trust that  
10 has adopted a bylaw or is a party to an agreement that restricts the  
11 transfer of the shares or other securities of the real estate  
12 investment trust may file with the county clerk of the county of the  
13 principal place of business of the real estate investment trust a  
14 copy of the bylaw or agreement and a statement attached to the copy  
15 that:

16 (1) contains the name of the real estate investment  
17 trust;

18 (2) states that the attached copy of the bylaw or  
19 agreement is a true and correct copy of the bylaw or agreement; and

20 (3) states that the filing has been authorized by the  
21 trust managers or shareholders, as appropriate.

22 (b) After the statement is filed with the county clerk, the  
23 bylaws or agreement restricting the transfer of shares or other  
24 securities is a public record, and the fact that the statement has  
25 been filed must be stated on a certificate representing the  
26 restricted shares or securities if required by Section 3.202.

27 (c) A real estate investment trust that is a party to an

1 agreement restricting the transfer of the shares or other  
2 securities of the real estate investment trust may make the  
3 agreement part of the real estate investment trust's certificate of  
4 formation without restating the provisions of the agreement in the  
5 certificate of formation by complying with this code or amending  
6 the certificate of formation. If the agreement alters the original  
7 or amended certificate of formation, the altered provision must be  
8 identified by reference or description in the certificate of  
9 amendment. If the agreement is an addition to the original or  
10 amended certificate of formation, the certificate of amendment must  
11 state that fact.

12 (d) The certificate of amendment must:

13 (1) include a copy of the agreement restricting the  
14 transfer of shares or other securities;

15 (2) state that the attached copy of the agreement is a  
16 true and correct copy of the agreement; and

17 (3) state that inclusion of the certificate of  
18 amendment as part of the certificate of formation has been  
19 authorized in the manner required by this code to amend the  
20 certificate of formation. (TREITA 7.40(F)(1), (2), (4), (G).)

21 Sec. 200.157. ENFORCEABILITY OF RESTRICTION ON TRANSFER OF  
22 CERTAIN SECURITIES. (a) A restriction placed on the transfer or  
23 registration of the transfer of a security of a real estate  
24 investment trust is specifically enforceable against the holder, or  
25 a successor or transferee of the holder, if:

26 (1) the restriction is reasonable and noted  
27 conspicuously on the certificate or other instrument representing

1 the security; or

2 (2) with respect to an uncertificated security, the  
3 restriction is reasonable and a notation of the restriction is  
4 contained in the notice sent with respect to the security under  
5 Section 3.205.

6 (b) Unless noted in the manner specified by Subsection (a)  
7 with respect to a certificate or other instrument or an  
8 uncertificated security, an otherwise enforceable restriction is  
9 ineffective against a transferee for value without actual knowledge  
10 of the restriction at the time of the transfer or against a  
11 subsequent transferee, regardless of whether the transfer is for  
12 value. A restriction is specifically enforceable against a person  
13 other than a transferee for value from the time the person acquires  
14 actual knowledge of the restriction's existence. (TREITA 7.40(C),  
15 (D).)

16 Sec. 200.158. JOINT OWNERSHIP OF SHARES. (a) If shares are  
17 registered on the books of a real estate investment trust in the  
18 names of two or more persons as joint owners with the right of  
19 survivorship and one of the owners dies, the real estate investment  
20 trust may record on its books and effect the transfer of the shares  
21 to a person, including the surviving joint owner, and pay any  
22 distributions made with respect to the shares, as if the surviving  
23 joint owner was the sole owner of the shares. The recording and  
24 distribution authorized by this subsection must be made after the  
25 death of a joint owner and before the real estate investment trust  
26 receives actual written notice that a party other than a surviving  
27 joint owner is claiming an interest in the shares or distribution.

1           (b) The discharge of a real estate investment trust from  
2 liability under Section 200.160 and the transfer of full legal and  
3 equitable title of the shares does not affect, reduce, or limit any  
4 cause of action existing in favor of an owner of an interest in the  
5 shares or distribution against the surviving owner. (TREITA  
6 7.40(H) (part).)

7           Sec. 200.159. LIABILITY FOR DESIGNATING OWNER OF SHARES. A  
8 real estate investment trust or an officer, trust manager,  
9 employee, or agent of the real estate investment trust may not be  
10 held liable for considering a person to be the owner of a share for a  
11 purpose described by Section 200.151, regardless of whether the  
12 person possesses a certificate for those shares. (TREITA  
13 11.20(B).)

14           Sec. 200.160. LIABILITY REGARDING JOINT OWNERSHIP OF  
15 SHARES. A real estate investment trust that transfers shares or  
16 makes a distribution to a surviving joint owner under Section  
17 200.158 before the real estate investment trust has received a  
18 written claim for the shares or distribution from another person is  
19 discharged from liability for the transfer or payment. (TREITA  
20 7.40(H) (part).)

21           Sec. 200.161. LIMITATION OF LIABILITY FOR OBLIGATIONS. (a)  
22 A holder of shares, an owner of any beneficial interest in shares,  
23 or a subscriber for shares whose subscription has been accepted is  
24 not under an obligation to the real estate investment trust or its  
25 obligees with respect to:

26           (1) the shares, other than the obligation to pay to the  
27 real estate investment trust the full amount of consideration,



1 fixed in compliance with Sections 200.104-200.108, for which the  
2 shares were or are to be issued;

3 (2) any contractual obligation of the real estate  
4 investment trust on the basis that the holder, beneficial owner, or  
5 subscriber is or was the alter ego of the real estate investment  
6 trust or on the basis of actual or constructive fraud, a sham to  
7 perpetrate a fraud, or other similar theory; or

8 (3) any obligation of the real estate investment trust  
9 on the basis of the failure of the real estate investment trust to  
10 observe any formality, including the failure to:

11 (A) comply with this code or the declaration of  
12 trust or bylaws of the real estate investment trust; or

13 (B) observe any requirement prescribed by this  
14 code or the declaration of trust or bylaws of the real estate  
15 investment trust for acts to be taken by the real estate investment  
16 trust or its trust managers or shareholders.

17 (b) Subsection (a)(2) does not prevent or limit the  
18 liability of a holder, beneficial owner, or subscriber if the  
19 obligee demonstrates that the holder, beneficial owner, or  
20 subscriber caused the real estate investment trust to be used for  
21 the purpose of perpetrating and did perpetrate an actual fraud on  
22 the obligee primarily for the direct personal benefit of the  
23 holder, beneficial owner, or subscriber. (TREITA 8.10(A).)

24 Sec. 200.162. PREEMPTION OF LIABILITY. The liability of a  
25 holder, beneficial owner, or subscriber of shares of a real estate  
26 investment trust for an obligation that is limited by Section  
27 200.161 is exclusive and preempts any other liability imposed for

1 that obligation under common law or otherwise. (TREITA 8.10(B)  
2 (part).)

3 Sec. 200.163. EXCEPTIONS TO LIMITATIONS. Section 200.161 or  
4 200.162 does not limit the obligation of a holder, beneficial  
5 owner, or subscriber to the obligee of the real estate investment  
6 trust if that person:

7 (1) expressly assumes, guarantees, or agrees to be  
8 personally liable to the obligee for the obligation; or

9 (2) is otherwise liable to the obligee for the  
10 obligation under this code or other applicable statute. (TREITA  
11 8.10(B) (part).)

12 Sec. 200.164. PLEDGEEES AND TRUST ADMINISTRATORS. (a) A  
13 pledgee or other holder of shares as collateral security is not  
14 personally liable as a shareholder.

15 (b) An executor, administrator, conservator, guardian,  
16 trustee, assignee for the benefit of creditors, or receiver is not  
17 personally liable as a holder of or subscriber to shares of a real  
18 estate investment trust.

19 (c) The estate and funds administered by an executor,  
20 administrator, conservator, guardian, trustee, assignee for the  
21 benefit of creditors, or receiver are liable for the full amount of  
22 the consideration for which the shares were or are to be issued.  
23 (TREITA 8.10(D), (E).)

24 [Sections 200.165-200.200 reserved for expansion]

25 SUBCHAPTER E. DISTRIBUTIONS AND SHARE DIVIDENDS

26 Sec. 200.201. AUTHORITY FOR DISTRIBUTIONS. The trust  
27 managers of a real estate investment trust may authorize a

1 distribution and the real estate investment trust may make a  
2 distribution, subject to Section 200.202 and any restriction in the  
3 certificate of formation. (TREITA 14.10(A).)

4 Sec. 200.202. LIMITATIONS ON DISTRIBUTIONS. (a) A real  
5 estate investment trust may not make a distribution:

6 (1) if the real estate investment trust would be  
7 insolvent after the distribution; or

8 (2) that is more than the surplus of the real estate  
9 investment trust.

10 (b) Notwithstanding Subsection (a)(2), if the net assets of  
11 a real estate investment trust are not less than the amount of the  
12 proposed distribution, the real estate investment trust may make a  
13 distribution involving a purchase or redemption of its own shares  
14 if the purchase or redemption is made by the real estate investment  
15 trust to:

16 (1) eliminate fractional shares;

17 (2) collect or settle indebtedness owed by or to the  
18 real estate investment trust;

19 (3) pay dissenting shareholders entitled to receive  
20 payment for their shares under this chapter; or

21 (4) effect the purchase or redemption of redeemable  
22 shares in accordance with this code. (TREITA 14.10(B), (C).)

23 Sec. 200.203. PRIORITY OF DISTRIBUTIONS. A real estate  
24 investment trust's indebtedness that arises as a result of the  
25 declaration of a distribution and a real estate investment trust's  
26 indebtedness issued in a distribution are at parity with the real  
27 estate investment trust's indebtedness to its general, unsecured

1 creditors, except to the extent the indebtedness is subordinated,  
2 or payment of that indebtedness is secured, by agreement. (TREITA  
3 14.10(D).)

4 Sec. 200.204. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM  
5 SURPLUS. (a) A real estate investment trust, by resolution of the  
6 trust managers of the real estate investment trust, may:

7 (1) create a reserve out of the surplus of the real  
8 estate investment trust; or

9 (2) designate or allocate in any manner a part or all  
10 of the real estate investment trust's surplus for a proper purpose.

11 (b) A real estate investment trust may increase, decrease,  
12 or abolish a reserve, designation, or allocation in the manner  
13 provided by Subsection (a). (TREITA 14.60.)

14 Sec. 200.205.. AUTHORITY FOR SHARE DIVIDENDS. The trust  
15 managers of a real estate investment trust may authorize a share  
16 dividend, and the real estate investment trust may pay a share  
17 dividend subject to Section 200.206 and any restriction in the  
18 certificate of formation. (TREITA 14.20(A).)

19 Sec. 200.206. LIMITATIONS ON SHARE DIVIDENDS. (a) A real  
20 estate investment trust may not pay a share dividend in authorized  
21 but unissued shares of any class if the surplus of the real estate  
22 investment trust is less than the amount required by Section  
23 200.208 to be transferred to stated capital at the time the share  
24 dividend is made.

25 (b) A share dividend in shares of any class may not be made  
26 to a holder of shares of any other class unless:

27 (1) the real estate investment trust's certificate of

1 formation provides for the dividend; or

2 (2) the share dividend is authorized by the  
3 affirmative vote or the written consent of the holders of at least a  
4 majority of the outstanding shares of the class in which the share  
5 dividend is to be made. (TREITA 14.20(B), (E).)

6 Sec. 200.207. VALUE OF SHARES ISSUED AS SHARE DIVIDENDS.

7 (a) A share dividend payable in authorized but unissued shares with  
8 par value shall be issued at the par value of the shares.

9 (b) A share dividend payable in authorized but unissued  
10 shares without par value shall be issued at the value set by the  
11 trust managers when the share dividend is authorized. (TREITA  
12 14.20(C) (part), (D) (part).)

13 Sec. 200.208. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a)

14 When a share dividend payable in authorized but unissued shares  
15 with par value is made by a real estate investment trust, an amount  
16 of surplus designated by the trust managers that is not less than  
17 the aggregate par value of the shares issued as a share dividend  
18 shall be transferred to stated capital.

19 (b) When a share dividend payable in authorized but unissued  
20 shares without par value is made by a real estate investment trust,  
21 an amount of surplus equal to the aggregate value set by the trust  
22 managers with respect to the shares under Section 200.207(b) shall  
23 be transferred to stated capital. (TREITA 14.20(C) (part), (D)  
24 (part).)

25 Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED

26 CAPITAL, AND SURPLUS. (a) The determination of whether a real  
27 estate investment trust is or would be insolvent and the

1 determination of the value of a real estate investment trust's net  
2 assets, stated capital, or surplus and each of the components of net  
3 assets, stated capital, or surplus may be based on:

4 (1) financial statements of the real estate investment  
5 trust that present the financial condition of the real estate  
6 investment trust in accordance with generally accepted accounting  
7 principles, including financial statements that include subsidiary  
8 entities or other entities accounted for on a consolidated basis or  
9 on the equity method of accounting;

10 (2) financial statements prepared using the method of  
11 accounting used to file the real estate investment trust's federal  
12 income tax return or using any other accounting practices and  
13 principles that are reasonable under the circumstances;

14 (3) financial information, including condensed or  
15 summary financial statements, that is prepared on the same basis as  
16 financial statements described by Subdivision (1) or (2);

17 (4) a projection, a forecast, or other forward-looking  
18 information relating to the future economic performance, financial  
19 condition, or liquidity of the real estate investment trust that is  
20 reasonable under the circumstances;

21 (5) a fair valuation or information from any other  
22 method that is reasonable under the circumstances; or

23 (6) a combination of a statement, a valuation, or  
24 information authorized by this section.

25 (b) Subsection (a) does not apply to the computation of any  
26 tax imposed under the laws of this state. (TREITA 14.40.)

27 Sec. 200.210. DATE OF DETERMINATION OF SURPLUS. (a) For

1 purposes of this subchapter, a determination of whether a real  
2 estate investment trust is or would be made insolvent by a  
3 distribution or share dividend or a determination of the value of a  
4 real estate investment trust's surplus shall be made:

5 (1) on the date the distribution or share dividend is  
6 authorized by the trust managers of the real estate investment  
7 trust if the distribution or the share dividend is made not later  
8 than the 120th day after the date of authorization; or

9 (2) if the distribution or the share dividend is made  
10 more than 120 days after the date of authorization:

11 (A) on the date designated by the trust managers  
12 if the date so designated is not earlier than 120 days before the  
13 date the distribution or the share dividend is made; or

14 (B) on the date the distribution or the share  
15 dividend is made if the trust managers do not designate a date as  
16 described in Paragraph (A).

17 (b) For purposes of this section, a distribution that  
18 involves:

19 (1) the incurrence by a real estate investment trust  
20 of indebtedness or a deferred payment obligation is considered to  
21 have been made on the date the indebtedness or obligation is  
22 incurred; or

23 (2) a contract by the real estate investment trust to  
24 acquire any of its own shares is considered to have been made on the  
25 date when the contract is made or takes effect or on the date the  
26 shares are acquired, at the option of the real estate investment  
27 trust. (TREITA 14.50.)

1           Sec. 200.211. SPLIT-UP OR DIVISION OF SHARES. The trust  
2 managers of a real estate investment trust may authorize the real  
3 estate investment trust to carry out any split-up or division of the  
4 issued shares of a class of the real estate investment trust into a  
5 larger number of shares within the same class that does not increase  
6 the stated capital of the real estate investment trust because the  
7 split-up or division of issued shares is not a share dividend or a  
8 distribution. (TREITA 14.30.)

9           [Sections 200.212-200.250 reserved for expansion]

10           SUBCHAPTER F. SHAREHOLDERS' MEETINGS; VOTING AND QUORUM

11           Sec. 200.251. ANNUAL MEETING. (a) An annual meeting of the  
12 shareholders of a real estate investment trust shall be held at a  
13 time that is stated in or set in accordance with the bylaws of the  
14 real estate investment trust.

15           (b) If the annual meeting is not held at the designated  
16 time, a shareholder may by certified or registered mail make a  
17 written request to an officer or trust manager of the real estate  
18 investment trust that the meeting be held within a reasonable time.  
19 If the annual meeting is not called before the 61st day after the  
20 date the request calling for a meeting is made, any shareholder may  
21 bring suit at law or in equity to compel the meeting to be held.

22           (c) Each shareholder has a justifiable interest sufficient  
23 to enable the shareholder to institute and prosecute a legal  
24 proceeding described by this section.

25           (d) The failure to hold an annual meeting at the designated  
26 time does not result in the winding up or termination of the real  
27 estate investment trust. (TREITA 10.10(B).)



1           Sec. 200.252. SPECIAL MEETINGS. A special meeting of the  
2 shareholders of a real estate investment trust may be called by:

3           (1) a trust manager, an officer of the real estate  
4 investment trust, or any other person authorized to call special  
5 meetings by the certificate of formation or bylaws of the real  
6 estate investment trust; or

7           (2) the holders of at least 10 percent of all of the  
8 shares of the real estate investment trust entitled to vote at the  
9 proposed special meeting unless a greater or lesser percentage of  
10 shares is specified in the certificate of formation, not to exceed  
11 50 percent of the shares entitled to vote. (TREITA 10.10(C).)

12           Sec. 200.253. NOTICE OF MEETING. (a) Written notice of a  
13 meeting in accordance with Section 6.051 shall be given to each  
14 shareholder entitled to vote at the meeting not later than the 10th  
15 day and not earlier than the 60th day before the date of the  
16 meeting. Notice shall be given in person or by mail by or at the  
17 direction of a trust manager, officer, or other person calling the  
18 meeting.

19           (b) The notice of a special meeting must contain a statement  
20 regarding the purpose or purposes of the meeting. (TREITA 11.10(A)  
21 (part).)

22           Sec. 200.254. CLOSING OF SHARE TRANSFER RECORDS. Share  
23 transfer records that are closed in accordance with Section 6.101  
24 for the purpose of determining which shareholders are entitled to  
25 receive notice of a meeting of shareholders shall remain closed for  
26 at least 10 days immediately preceding the date of the meeting.  
27 (TREITA 11.20(C) (part).)

1           Sec. 200.255. RECORD DATE FOR WRITTEN CONSENT TO ACTION.

2   The record date provided in accordance with Section 6.102(a) may  
3   not be more than 10 days after the date on which the trust managers  
4   adopt the resolution setting the record date. (TREITA 11.20(D)  
5   (part).)

6           Sec. 200.256. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN  
7   CONSENT TO ACTION. The record date provided by the trust managers in  
8   accordance with Section 6.101 must be at least 10 days before the  
9   date on which the particular action requiring the determination of  
10  shareholders is to be taken. (TREITA 11.20(C) (part).)

11          Sec. 200.257. QUORUM. (a) Subject to Subsection (b), the  
12  holders of the majority of the shares entitled to vote at a meeting  
13  of the shareholders of a real estate investment trust that are  
14  present or represented by proxy at the meeting are a quorum for the  
15  consideration of a matter to be presented at that meeting.

16          (b) The certificate of formation of a real estate investment  
17  trust may provide that a quorum is present only if:

18           (1) the holders of a specified portion of the shares  
19  that is greater than the majority of the shares entitled to vote are  
20  represented at the meeting in person or by proxy; or

21           (2) the holders of a specified portion of the shares  
22  that is less than the majority but not less than one-third of the  
23  shares entitled to vote are represented at the meeting in person or  
24  by proxy.

25          (c) Unless provided by the certificate of formation or  
26  bylaws of the real estate investment trust, after a quorum is  
27  present at a meeting of shareholders, the shareholders may conduct

1 business properly brought before the meeting until the meeting is  
2 adjourned. The subsequent withdrawal from the meeting of a  
3 shareholder or the refusal of a shareholder present at or  
4 represented by proxy at the meeting to vote does not negate the  
5 presence of a quorum at the meeting.

6 (d) Unless provided by the certificate of formation or  
7 bylaws, the shareholders of the real estate investment trust at a  
8 meeting at which a quorum is not present may adjourn the meeting  
9 until the time and to the place as may be determined by a vote of the  
10 holders of the majority of the shares who are present or represented  
11 by proxy at the meeting. (TREITA 12.10(A), (B).)

12 Sec. 200.258. VOTING IN ELECTION OF TRUST MANAGERS. (a)  
13 Subject to Subsection (b), trust managers of a real estate  
14 investment trust shall be elected by two-thirds of the votes cast by  
15 the holders of shares entitled to vote in the election of trust  
16 managers at a meeting of shareholders at which a quorum is present.

17 (b) The certificate of formation or bylaws of a real estate  
18 investment trust may provide that a trust manager of the real estate  
19 investment trust shall be elected only if the trust manager  
20 receives:

21 (1) the vote of the holders of a specified portion, but  
22 not less than the majority, of the shares entitled to vote in the  
23 election of trust managers;

24 (2) the vote of the holders of a specified portion, but  
25 not less than the majority, of the shares entitled to vote in the  
26 election of trust managers and represented in person or by proxy at  
27 a meeting of shareholders at which a quorum is present; or

1           (3) the vote of the holders of a specified portion, but  
2 not less than the majority, of the votes cast by the holders of  
3 shares entitled to vote in the election of trust managers at a  
4 meeting of shareholders at which a quorum is present.

5           (c) Subject to Section 200.259, at each election of trust  
6 managers of a real estate investment trust, each shareholder  
7 entitled to vote at the election is entitled to vote, in person or  
8 by proxy, the number of shares owned by the shareholder for as many  
9 candidates as there are trust managers to be elected and for whose  
10 election the shareholder is entitled to vote. (TREITA 12.10(D),  
11 13.10(E)(1).)

12           Sec. 200.259. CUMULATIVE VOTING IN ELECTION OF TRUST  
13 MANAGERS. (a) Cumulative voting is allowed only if specifically  
14 authorized by the certificate of formation of a real estate  
15 investment trust.

16           (b) Cumulative voting occurs when a shareholder:

17           (1) gives one candidate as many votes as the total of  
18 the number of the trust managers to be elected multiplied by the  
19 shareholder's shares; or

20           (2) distributes the votes among one or more candidates  
21 using the same principle.

22           (c) If cumulative voting is specifically authorized by the  
23 certificate of formation, a shareholder who intends to cumulate  
24 votes must give written notice of that intention to the trust  
25 managers on or before the day preceding the date of the election at  
26 which the shareholder intends to cumulate votes. (TREITA  
27 13.10(E)(2).)

1           Sec. 200.260. VOTING ON MATTERS OTHER THAN ELECTION OF  
2 TRUST MANAGERS. (a) Subject to Subsection (b), with respect to a  
3 matter other than the election of trust managers or a matter for  
4 which the affirmative vote of the holders of a specified portion of  
5 the shares entitled to vote is required by this code, the  
6 affirmative vote of the holders of the majority of the shares  
7 entitled to vote on, and who voted for, against, or expressly  
8 abstained with respect to, the matter at a shareholders' meeting of  
9 a real estate investment trust at which a quorum is present is the  
10 act of the shareholders.

11           (b) With respect to a matter other than the election of  
12 trust managers or a matter for which the affirmative vote of the  
13 holders of a specified portion of the shares entitled to vote is  
14 required by this code, the certificate of formation or bylaws of a  
15 real estate investment trust may provide that the act of the  
16 shareholders of the real estate investment trust is:

17           (1) the affirmative vote of the holders of a specified  
18 portion, but not less than the majority, of the shares entitled to  
19 vote on that matter;

20           (2) the affirmative vote of the holders of a specified  
21 portion, but not less than the majority, of the shares entitled to  
22 vote on that matter and represented in person or by proxy at a  
23 shareholders' meeting at which a quorum is present;

24           (3) the affirmative vote of the holders of a specified  
25 portion, but not less than the majority, of the shares entitled to  
26 vote on, and who voted for or against, the matter at a shareholders'  
27 meeting at which a quorum is present; or

1           (4) the affirmative vote of the holders of a specified  
2 portion, but not less than the majority, of the shares entitled to  
3 vote on, and who voted for, against, or expressly abstained with  
4 respect to, the matter at a shareholders' meeting at which a quorum  
5 is present. (TREITA 12.10(C).)

6           Sec. 200.261. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.

7           (a) In this section, a "fundamental action" means:

8                   (1) an amendment of a certificate of formation;

9                   (2) a voluntary winding up under Chapter 11;

10                   (3) a revocation of a voluntary decision to wind up  
11 under Section 11.151;

12                   (4) a cancellation of an event requiring winding up  
13 under Section 11.152; or

14                   (5) a reinstatement under Section 11.202.

15           (b) Except as otherwise provided by this code or the  
16 certificate of formation or bylaws of a real estate investment  
17 trust in accordance with Section 200.260, the vote required for  
18 approval of a fundamental action by the shareholders is the  
19 affirmative vote of the holders of at least two-thirds of the  
20 outstanding shares entitled to vote on the fundamental action.

21           (c) If a class or series of shares is entitled to vote as a  
22 class or series on a fundamental action, the vote required for  
23 approval of the action by the shareholders is the affirmative vote  
24 of the holders of at least two-thirds of the outstanding shares in  
25 each class or series of shares entitled to vote on the action as a  
26 class and at least two-thirds of the outstanding shares otherwise  
27 entitled to vote on the action. Shares entitled to vote as a class

1 or series shall be entitled to vote only as a class or series unless  
2 otherwise entitled to vote on each matter generally or otherwise  
3 provided by the certificate of formation.

4 (d) Unless an amendment to the certificate of formation is  
5 undertaken by the trust managers under Section 200.103, separate  
6 voting by a class or series of shares of a real estate investment  
7 trust is required for approval of an amendment to the certificate of  
8 formation that would result in:

9 (1) the increase or decrease of the aggregate number  
10 of authorized shares of the class or series;

11 (2) the increase or decrease of the par value of the  
12 shares of the class, including changing shares with par value into  
13 shares without par value or changing shares without par value into  
14 shares with par value;

15 (3) effecting an exchange, reclassification, or  
16 cancellation of all or part of the shares of the class or series;

17 (4) effecting an exchange or creating a right of  
18 exchange of all or part of the shares of another class or series  
19 into the shares of the class or series;

20 (5) the change of the designations, preferences,  
21 limitations, or relative rights of the shares of the class or  
22 series;

23 (6) the change of the shares of the class or series,  
24 with or without par value, into the same or a different number of  
25 shares, with or without par value, of the same class or series or  
26 another class or series;

27 (7) the creation of a new class or series of shares

1 with rights and preferences equal, prior, or superior to the shares  
2 of the class or series;

3 (8) increasing the rights and preferences of a class  
4 or series with rights and preferences equal, prior, or superior to  
5 the shares of the class or series;

6 (9) increasing the rights and preferences of a class  
7 or series with rights or preferences later or inferior to the shares  
8 of the class or series in such a manner that the rights or  
9 preferences will be equal, prior, or superior to the shares of the  
10 class or series;

11 (10) dividing the shares of the class into series and  
12 setting and determining the designation of the series and the  
13 variations in the relative rights and preferences between the  
14 shares of the series;

15 (11) the limitation or denial of existing preemptive  
16 rights or cumulative voting rights of the shares of the class or  
17 series; or

18 (12) canceling or otherwise affecting the dividends on  
19 the shares of the class or series that have accrued but have not  
20 been declared.

21 (e) Unless otherwise provided by the certificate of  
22 formation, if the holders of the outstanding shares of a class that  
23 is divided into series are entitled to vote as a class on a proposed  
24 amendment that would affect equally all series of the class, other  
25 than a series in which no shares are outstanding or a series that is  
26 not affected by the amendment, the holders of the separate series  
27 are not entitled to separate class votes.



1 (f) Unless otherwise provided by the certificate of  
2 formation, a proposed amendment to the certificate of formation  
3 that would solely effect changes in the designations, preferences,  
4 limitations, or relative rights, including voting rights, of one or  
5 more series of shares of the real estate investment trust that have  
6 been established under the authority granted to the trust managers  
7 in the certificate of formation in accordance with Section 200.103  
8 does not require the approval of the holders of the outstanding  
9 shares of a class or series other than the affected series if, after  
10 giving effect to the amendment:

11 (1) the preferences, limitations, or relative rights  
12 of the affected series may be set and determined by the trust  
13 managers with respect to the establishment of a new series of shares  
14 under the authority granted to the trust managers in the  
15 certificate of formation in accordance with Section 200.103; or

16 (2) any new series established as a result of a  
17 reclassification of the affected series are within the preferences,  
18 limitations, and relative rights that are described by Subdivision  
19 (1). (TREITA 19.10 (part), 22.20(A) (part), 22.30.)

20 Sec. 200.262. CHANGES IN VOTE REQUIRED FOR CERTAIN MATTERS.

21 (a) With respect to a matter for which the affirmative vote of the  
22 holders of a specified portion of the shares entitled to vote is  
23 required by this code, the certificate of formation of a real estate  
24 investment trust may provide that the affirmative vote of the  
25 holders of a specified portion, but not less than the majority, of  
26 the shares entitled to vote on that matter is required for  
27 shareholder action on that matter.

1           (b) With respect to a matter for which the affirmative vote  
2 of the holders of a specified portion of the shares of a class or  
3 series is required by this code, the certificate of formation may  
4 provide that the affirmative vote of the holders of a specified  
5 portion, but not less than the majority, of the shares of that class  
6 or series is required for action of the holders of shares of that  
7 class or series on that matter.

8           (c) If a provision of the certificate of formation provides  
9 that the affirmative vote of the holders of a specified portion that  
10 is greater than the majority of the shares entitled to vote on a  
11 matter is required for shareholder action on that matter, the  
12 provision may not be amended, directly or indirectly, without the  
13 same affirmative vote unless otherwise provided by the certificate  
14 of formation.

15           (d) If a provision of the certificate of formation provides  
16 that the affirmative vote of the holders of a specified portion that  
17 is greater than the majority of the shares of a class or series is  
18 required for shareholder action on a matter, the provision may not  
19 be amended, directly or indirectly, without the same affirmative  
20 vote unless otherwise provided by the certificate of formation.  
21 (TREITA 12.10(E).)

22           Sec. 200.263. NUMBER OF VOTES PER SHARE. (a) Except as  
23 provided by the certificate of formation of a real estate  
24 investment trust or this title or Title 1, each outstanding share,  
25 regardless of class, is entitled to one vote on each matter  
26 submitted to a vote at a shareholders' meeting.

27           (b) If the certificate of formation provides for more or

1 less than one vote per share on a matter for all of the outstanding  
2 shares or for the shares of a class or series, each reference in  
3 this code or in the certificate of formation or bylaws, unless  
4 expressly stated otherwise, to a specified portion of the shares  
5 with respect to that matter refers to the portion of the votes  
6 entitled to be cast with respect to those shares under the  
7 certificate of formation. (TREITA 13.10(A).)

8       Sec. 200.264. VOTING IN PERSON OR BY PROXY. (a) A  
9 shareholder may vote in person or by proxy executed in writing by  
10 the shareholder.

11       (b) A telegram, telex, cablegram, or other form of  
12 electronic transmission, including telephonic transmission, by the  
13 shareholder, or a photographic, photostatic, facsimile, or similar  
14 reproduction of a writing executed by the shareholder, is  
15 considered an execution in writing for purposes of this section.  
16 Any electronic transmission must contain or be accompanied by  
17 information from which it can be determined that the transmission  
18 was authorized by the shareholder. (TREITA 13.10(C) (part).)

19       Sec. 200.265. TERM OF PROXY. A proxy is not valid after 11  
20 months after the date the proxy is executed unless otherwise  
21 provided by the proxy. (TREITA 13.10(C) (part).)

22       Sec. 200.266. REVOCABILITY OF PROXY. (a) In this section, a  
23 "proxy coupled with an interest" includes the appointment as proxy  
24 of:

25               (1) a pledgee;

26               (2) a person who purchased or agreed to purchase the  
27 shares subject to the proxy;

1           (3) a person who owns or holds an option to purchase  
2 the shares subject to the proxy;

3           (4) a creditor of the real estate investment trust who  
4 extended the real estate investment trust credit under terms  
5 requiring the appointment;

6           (5) an employee of the real estate investment trust  
7 whose employment contract requires the appointment; or

8           (6) a party to a voting agreement created under  
9 Section 6.252.

10           (b) A proxy is revocable unless:

11           (1) the proxy form conspicuously states that the proxy  
12 is irrevocable; and

13           (2) the proxy is coupled with an interest. (TREITA  
14 13.10(C) (part).)

15           Sec. 200.267. ENFORCEABILITY OF PROXY. (a) An irrevocable  
16 proxy is specifically enforceable against the holder of shares or  
17 any successor or transferee of the holder if:

18           (1) the proxy is noted conspicuously on the  
19 certificate representing the shares subject to the proxy; or

20           (2) in the case of uncertificated shares, notation of  
21 the proxy is contained in the notice sent under Section 3.205 with  
22 respect to the shares subject to the proxy.

23           (b) An irrevocable proxy that is otherwise enforceable is  
24 ineffective against a transferee for value without actual knowledge  
25 of the existence of the irrevocable proxy at the time of the  
26 transfer or against a subsequent transferee, regardless of whether  
27 the transfer is for value, unless:

1           (1) the proxy is noted conspicuously on the  
2 certificate representing the shares subject to the proxy; or

3           (2) in the case of uncertificated shares, notation of  
4 the proxy is contained in the notice sent under Section 3.205 with  
5 respect to the shares subject to the proxy.

6           (c) An irrevocable proxy shall be specifically enforceable  
7 against a person who is not a transferee for value from the time the  
8 person acquires actual knowledge of the existence of the  
9 irrevocable proxy. (TREITA 13.10(D).)

10           Sec. 200.268. PROCEDURES IN BYLAWS RELATING TO PROXIES. A  
11 real estate investment trust may establish in the bylaws of the real  
12 estate investment trust procedures consistent with this code for  
13 determining the validity of proxies and determining whether shares  
14 held of record by a bank, broker, or other nominee are represented  
15 at a meeting of shareholders. The procedures may incorporate rules  
16 of and determinations made by a self-regulatory organization  
17 regulating that bank, broker, or other nominee. (TREITA 12.10(F).)

18           [Sections 200.269-200.300 reserved for expansion]

19                           SUBCHAPTER G. TRUST MANAGERS

20           Sec. 200.301. MANAGEMENT BY TRUST MANAGERS. The control,  
21 operation, disposition, investment, and management of the trust  
22 estate and the powers necessary or appropriate to effect any  
23 purpose for which a real estate investment trust is organized are  
24 vested in one or more trust managers. (TREITA 4.10(A) (part).)

25           Sec. 200.302. DESIGNATION OF TRUST MANAGERS. (a) The  
26 certificate of formation of a real estate investment trust must  
27 contain the name of each trust manager.

1 (b) A successor trust manager must be selected in accordance  
2 with the certificate of formation. The selection of a successor  
3 trust manager is considered an amendment to the certificate of  
4 formation of a real estate investment trust. (TREITA 4.10(A)  
5 (part).)

6 Sec. 200.303. TRUST MANAGER ELIGIBILITY REQUIREMENTS. A  
7 trust manager of a real estate investment trust must be an  
8 individual. Unless the certificate of formation or bylaws of a real  
9 estate investment trust provide otherwise, a person is not required  
10 to be a resident of this state or a shareholder of the real estate  
11 investment trust to serve as a trust manager. The certificate of  
12 formation or bylaws may prescribe other qualifications for trust  
13 managers. (TREITA 4.10(A) (part).)

14 Sec. 200.304. NUMBER OF TRUST MANAGERS. (a) The  
15 certificate of formation or bylaws of the real estate investment  
16 trust shall set the number of trust managers or provide for the  
17 manner of determining the number of trust managers, except that the  
18 certificate of formation shall set the number constituting the  
19 initial trust managers.

20 (b) The number of trust managers may be increased or  
21 decreased by amendment to, or as provided by, the certificate of  
22 formation or bylaws. A decrease in the number of trust managers may  
23 not shorten the term of an incumbent trust manager. (TREITA 4.10(B)  
24 (part).)

25 Sec. 200.305. COMPENSATION. A trust manager or officer of a  
26 real estate investment trust is entitled to receive compensation  
27 set by or in the manner provided by the certificate of formation or

1 bylaws of the real estate investment trust. If the certificate of  
2 formation or bylaws do not provide for compensation to trust  
3 managers and officers, the trust managers of the real estate  
4 investment trust must determine the compensation by vote at a  
5 meeting or by written consent. (TREITA 4.10(H).)

6 Sec. 200.306. TERM OF TRUST MANAGER. (a) Except as provided  
7 by the certificate of formation or bylaws of a real estate  
8 investment trust, a trust manager of the real estate investment  
9 trust serves until the trust manager's successor is elected.

10 (b) A trust manager may succeed himself or herself in  
11 office.

12 (c) If a successor trust manager is not elected, the trust  
13 manager in office continues to serve as trust manager until the  
14 trust manager's successor is elected. (TREITA 4.10(B) (part).)

15 Sec. 200.307. STAGGERED TERMS OF TRUST MANAGERS. (a) A  
16 governing document of a real estate investment trust may provide  
17 that all or some of the board of trust managers may be divided into  
18 two or three classes. Each class must include the same or a similar  
19 number of trust managers as each other class.

20 (b) The terms of office of trust managers constituting the  
21 first class expire on the election of successors at the first annual  
22 meeting of shareholders after the election of those trust managers.  
23 The terms of office of trust managers constituting the second class  
24 expire on the election of successors at the second annual meeting of  
25 shareholders after election of those trust managers. The terms of  
26 office of trust managers constituting the third class, if any,  
27 expire on the election of successors at the third annual meeting of

1 shareholders after election of those trust managers.

2 (c) If a governing document of the real estate investment  
3 trust provides for the classification of trust managers, an annual  
4 election for trust managers as a whole is not necessary. At each  
5 annual meeting held after the classification of trust managers, an  
6 election shall be held to elect the number of trust managers equal  
7 to the number of trust managers in the class the term of which  
8 expires on the date of the meeting, and those trust managers serve  
9 until:

10 (1) the second succeeding annual meeting if there are  
11 two classes; or

12 (2) the third succeeding annual meeting if there are  
13 three classes.

14 (d) Unless provided by the certificate of formation or a  
15 bylaw adopted by shareholders, staggered terms for trust managers  
16 do not take effect until the next annual meeting of shareholders at  
17 which trust managers are elected. Staggered terms for trust  
18 managers may not be effected if any shareholder has the right to  
19 cumulate votes for the election of trust managers and the number of  
20 trust managers is fewer than nine trust managers. (TREITA  
21 4.10(C).)

22 Sec. 200.308. VACANCY. (a) Except as provided by  
23 Subsection (b), a vacancy occurring in the office of a trust manager  
24 of a real estate investment trust may be filled by the affirmative  
25 vote of the majority of the remaining trust managers, even if the  
26 majority of trust managers constitutes less than a quorum of the  
27 trust managers.



1           (b) The certificate of formation or bylaws of the real  
2 estate investment trust may provide an alternative procedure for  
3 filling a vacancy occurring in the office of a trust manager,  
4 including filling vacancies by simple majority or super majority  
5 votes of the shareholders.

6           (c) The term of a trust manager elected to fill a vacancy  
7 occurring in the office of a trust manager is the unexpired term of  
8 the trust manager's predecessor in office and until the trust  
9 manager's successor is elected and has qualified. (TREITA  
10 4.10(D).)

11           Sec. 200.309. NOTICE OF MEETING. (a) Regular meetings of  
12 the trust managers of a real estate investment trust may be held  
13 with or without notice as prescribed by the real estate investment  
14 trust's bylaws.

15           (b) Special meetings of the trust managers shall be held  
16 with notice as prescribed by the bylaws.

17           (c) A notice of a board meeting is not required to specify  
18 the business to be transacted at the meeting or the purpose of the  
19 meeting, unless required by the bylaws. (TREITA 10.20(B) (part).)

20           Sec. 200.310. QUORUM. A quorum of the board of trust  
21 managers of a real estate investment trust is the majority of the  
22 number of trust managers unless the certificate of formation or  
23 bylaws require a greater number. (TREITA 4.10(E).)

24           Sec. 200.311. COMMITTEES OF TRUST MANAGERS. (a) If  
25 authorized by the certificate of formation or bylaws, the trust  
26 managers of a real estate investment trust, by resolution adopted  
27 by a majority of the trust managers, may designate:

1 (1) committees composed of one or more trust managers;

2 or

3 (2) trust managers as alternate committee members to  
4 replace absent or disqualified committee members at a committee  
5 meeting, subject to any limitations imposed by the trust managers.

6 (b) To the extent provided by the resolution designating a  
7 committee or the certificate of formation or bylaws and subject to  
8 Subsection (c), the committee has the authority of the trust  
9 managers.

10 (c) A committee of the trust managers may not:

11 (1) amend the certificate of formation, except to  
12 classify or reclassify shares in accordance with Section 200.103 if  
13 authorized by the resolution designating the committee,  
14 certificate of formation, or bylaws;

15 (2) propose a reduction of stated capital of the real  
16 estate investment trust;

17 (3) approve a plan of merger or share exchange of the  
18 real estate investment trust;

19 (4) recommend to shareholders the sale, lease, or  
20 exchange of all or substantially all of the property and assets of  
21 the real estate investment trust not made in the usual and regular  
22 course of its business;

23 (5) recommend to the shareholders a voluntary winding  
24 up and termination or a revocation of the real estate investment  
25 trust;

26 (6) amend, alter, or repeal the bylaws or adopt new  
27 bylaws;

1           (7) fill vacancies in the offices of the trust  
2 managers;

3           (8) fill vacancies in or designate alternate members  
4 of a committee of the trust managers;

5           (9) fill a vacancy to be filled because of an increase  
6 in the number of trust managers;

7           (10) elect or remove officers of the real estate  
8 investment trust or members or alternate members of a committee of  
9 the trust managers;

10           (11) set the compensation of the members or alternate  
11 members of a committee of the trust managers; or

12           (12) alter or repeal a resolution of the trust  
13 managers that states that it may not be amended or repealed.

14           (d) A committee of the trust managers may authorize a  
15 distribution or the issuance of shares if authorized by the  
16 resolution designating the committee or by the certificate of  
17 formation or bylaws.

18           (e) The designation of and delegation of authority to a  
19 committee of the trust managers does not relieve a trust manager of  
20 responsibility imposed by law. (TREITA 4.30.)

21           Sec. 200.312. LIABILITY OF TRUST MANAGERS. (a) A trust  
22 manager of a real estate investment trust who votes for or assents  
23 to a distribution of assets made by the real estate investment trust  
24 to its shareholders during the liquidation of the real estate  
25 investment trust without the payment and discharge of or the making  
26 of adequate provision for the payment of all of the known debts,  
27 liabilities, and other obligations of the real estate investment

1 trust is jointly and severally liable to the real estate investment  
2 trust for the value of the distributed assets to the extent the  
3 debts, liabilities, and other obligations are not paid and  
4 discharged.

5 (b) A trust manager of a real estate investment trust who  
6 votes for or assents to the making of a loan to another trust  
7 manager or officer of the real estate investment trust or to the  
8 making of a loan secured by shares of the real estate investment  
9 trust is jointly and severally liable to the real estate investment  
10 trust for the loan amount until the loan is repaid.

11 (c) A trust manager is not jointly and severally liable  
12 under Subsection (a) if, in determining the amount available for  
13 the distribution, the trust manager, acting in good faith and with  
14 ordinary care:

15 (1) relied on information, opinions, reports, or  
16 statements in accordance with Section 3.102; or

17 (2) considered the assets of the real estate  
18 investment trust to be valued at least at book value. (TREITA  
19 15.10(A) (part), (B).)

20 Sec. 200.313. STATUTE OF LIMITATIONS ON CERTAIN ACTION  
21 AGAINST TRUST MANAGERS. An action may not be brought against a trust  
22 manager of a real estate investment trust under Section 200.312  
23 after the second anniversary of the date the alleged act giving rise  
24 to the liability occurred. (TREITA 15.10(G).)

25 Sec. 200.314. IMMUNITY FROM LIABILITY FOR PERFORMANCE OF  
26 DUTY. A trust manager of a real estate investment trust may not be  
27 held liable to the real estate investment trust for an act,

1 omission, loss, damage, or expense arising from the performance of  
2 the trust manager's duties under the trust, except for liability  
3 arising from the wilful misfeasance, wilful malfeasance, or gross  
4 negligence of the trust manager. (TREITA 15.10(E).)

5 Sec. 200.315. RIGHT OF CONTRIBUTION. A trust manager who is  
6 liable for a claim asserted under Section 200.312 is entitled to  
7 receive contribution from each of the other trust managers who are  
8 liable with respect to that claim in an amount appropriate to  
9 achieve equity. (TREITA 15.10(F).)

10 Sec. 200.316. OFFICERS. (a) An officer of a real estate  
11 investment trust designated by the trust managers under Section  
12 3.103 may exercise all of the powers of a trust manager relating to  
13 the business and affairs of the real estate investment trust,  
14 unless action by the trust managers is specified by this code or  
15 another applicable law.

16 (b) A designation of or delegation of authority to an  
17 officer of a real estate investment trust described by this section  
18 does not relieve a trust manager of responsibility imposed by law.  
19 (TREITA 4.10(F) (part).)

20 Sec. 200.317. CONTRACTS OR TRANSACTIONS INVOLVING  
21 INTERESTED TRUST MANAGERS AND OFFICERS. (a) This section applies  
22 only to a contract or transaction between a real estate investment  
23 trust and:

24 (1) one or more of the trust's trust managers or  
25 officers; or

26 (2) an entity or other organization in which one or  
27 more of the trust's trust managers or officers:

1 (A) is a managerial official; or

2 (B) has a financial interest.

3 (b) An otherwise valid contract or transaction is valid  
4 notwithstanding that a trust manager or officer of the trust is  
5 present at or participates in the meeting of the trust managers or  
6 of a committee of the trust managers that authorizes the contract or  
7 transaction, or votes to authorize the contract or transaction, if:

8 (1) the material facts as to the relationship or  
9 interest and as to the contract or transaction are disclosed to or  
10 known by:

11 (A) the trust managers or a committee of the  
12 trust managers, and the trust managers or committee of the trust  
13 managers in good faith authorize the contract or transaction by the  
14 affirmative vote of the majority of disinterested trust managers or  
15 committee members, regardless of whether the disinterested trust  
16 managers or committee members constitute a quorum; or

17 (B) the shareholders entitled to vote on the  
18 authorization of the contract or transaction, and the contract or  
19 transaction is specifically approved in good faith by a vote of the  
20 shareholders; or

21 (2) the contract or transaction is fair to the real  
22 estate investment trust when the contract or transaction is  
23 authorized, approved, or ratified by the trust managers, a  
24 committee of the trust managers, or the shareholders.

25 (c) Common or interested trust managers may be included in  
26 determining the presence of a quorum at a meeting of the trust  
27 managers, or a committee of the trust managers, that authorizes the

1 contract or transaction. (TREITA 4.20.)

2 [Sections 200.318-200.350 reserved for expansion]

3 SUBCHAPTER H. INVESTMENTS

4 Sec. 200.351. INVESTMENTS. A trust manager or officer of a  
5 real estate investment trust has complete discretion with respect  
6 to the investment of the trust estate unless the investment is  
7 contrary to or inconsistent with:

8 (1) this chapter;

9 (2) a provision of the Internal Revenue Code relating  
10 to or governing real estate investment trusts; or

11 (3) regulations adopted under a provision of the  
12 Internal Revenue Code relating to or governing real estate  
13 investment trusts. (TREITA 4.10(G).)

14 [Sections 200.352-200.400 reserved for expansion]

15 SUBCHAPTER I. FUNDAMENTAL BUSINESS TRANSACTIONS

16 Sec. 200.401. DEFINITIONS. In this subchapter:

17 (1) "Participating shares" means shares that entitle  
18 the holders of the shares to participate without limitation in  
19 distributions.

20 (2) "Sale of all or substantially all of the assets"  
21 means the sale, lease, exchange, or other disposition, other than a  
22 pledge, mortgage, deed of trust, or trust indenture unless  
23 otherwise provided by the certificate of formation, of all or  
24 substantially all of the property and assets of a domestic real  
25 estate investment trust that is not made in the usual and regular  
26 course of the trust's business without regard to whether the  
27 disposition is made with the goodwill of the business. The term

1 does not include a transaction that results in the real estate  
2 investment trust directly or indirectly:

3 (A) continuing to engage in one or more  
4 businesses; or

5 (B) applying a portion of the consideration  
6 received in connection with the transaction to the conduct of a  
7 business that the real estate investment trust engages in after the  
8 transaction.

9 (3) "Shares" includes a receipt or other instrument  
10 issued by a depository representing an interest in one or more  
11 shares or fractions of shares of a domestic or foreign real estate  
12 investment trust that are deposited with the depository.

13 (4) "Voting shares" means shares that entitle the  
14 holders of the shares to vote unconditionally in elections of trust  
15 managers. (TREITA 23.30(H), 24.10(A) (part), (B), 24.20(A)  
16 (part).)

17 Sec. 200.402. APPROVAL OF MERGER. (a) A real estate  
18 investment trust that is a party to the merger under Chapter 10 must  
19 approve the merger by complying with this section.

20 (b) The trust managers of the real estate investment trust  
21 shall adopt a resolution that:

22 (1) approves the plan of merger; and

23 (2) if shareholder approval of the merger is required  
24 by this subchapter:

25 (A) recommends that the plan of merger be  
26 approved by the shareholders of the real estate investment trust;

27 or



1           (B) directs that the plan of merger be submitted  
2 to the shareholders for approval without recommendation if the  
3 trust managers determine for any reason not to recommend approval  
4 of the plan of merger.

5           (c) Except as provided by this subchapter or Chapter 10, the  
6 plan of merger shall be submitted to the shareholders of the real  
7 estate investment trust for approval as provided by this  
8 subchapter. The trust managers may place conditions on the  
9 submission of the plan of merger to the shareholders.

10           (d) If the trust managers approve a plan of merger required  
11 to be approved by the shareholders of the real estate investment  
12 trust but do not adopt a resolution recommending that the plan of  
13 merger be approved by the shareholders, the trust managers shall  
14 communicate to the shareholders the reason for the trust managers'  
15 determination to submit the plan of merger without a  
16 recommendation.

17           (e) Except as provided by Chapter 10 or Sections  
18 200.407-200.409, the shareholders of the real estate investment  
19 trust shall approve the plan of merger as provided by this  
20 subchapter. (TREITA 23.30(A), (B), (C).)

21           Sec. 200.403. APPROVAL OF CONVERSION. (a) A real estate  
22 investment trust must approve a conversion under Chapter 10 by  
23 complying with this section.

24           (b) The trust managers of the real estate investment trust  
25 shall adopt a resolution that approves the plan of conversion and:

26           (1) recommends that the plan of conversion be approved  
27 by the shareholders of the real estate investment trust; or

1           (2) directs that the plan of conversion be submitted  
2 to the shareholders for approval without recommendation if the  
3 trust managers determine for any reason not to recommend approval  
4 of the plan of conversion.

5           (c) The plan of conversion shall be submitted to the  
6 shareholders of the real estate investment trust for approval as  
7 provided by this subchapter. The trust managers may place  
8 conditions on the submission of the plan of conversion to the  
9 shareholders.

10           (d) If the trust managers approve a plan of conversion but  
11 do not adopt a resolution recommending that the plan of conversion  
12 be approved by the shareholders of the real estate investment  
13 trust, the trust managers shall communicate to the shareholders the  
14 reason for the trust managers' determination to submit the plan of  
15 conversion without a recommendation.

16           (e) Except as provided by Sections 200.407-200.409, the  
17 shareholders of the real estate investment trust must approve the  
18 plan of conversion as provided by this subchapter. (New.)

19           Sec. 200.404. APPROVAL OF EXCHANGE. (a) A real estate  
20 investment trust the shares of which are to be acquired in an  
21 exchange under Chapter 10 must approve the exchange by complying  
22 with this section.

23           (b) The trust managers shall adopt a resolution that  
24 approves the plan of exchange and:

25                 (1) recommends that the plan of exchange be approved  
26 by the shareholders of the real estate investment trust; or

27                 (2) directs that the plan of exchange be submitted to

1 the shareholders for approval without recommendation if the trust  
2 managers determine for any reason not to recommend approval of the  
3 plan of exchange.

4 (c) The plan of exchange shall be submitted to the  
5 shareholders of the real estate investment trust for approval as  
6 provided by this subchapter. The trust managers may place  
7 conditions on the submission of the plan of exchange to the  
8 shareholders.

9 (d) If the trust managers approve a plan of exchange but do  
10 not adopt a resolution recommending that the plan of exchange be  
11 approved by the shareholders of the real estate investment trust,  
12 the trust managers shall communicate to the shareholders the reason  
13 for the trust managers' determination to submit the plan of  
14 exchange to shareholders without a recommendation.

15 (e) Except as provided by Sections 200.407-200.409, the  
16 shareholders of the real estate investment trust shall approve the  
17 plan of exchange as provided by this subchapter. (TREITA 23.30(A),  
18 (B), (C).)

19 Sec. 200.405. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL  
20 OF ASSETS. (a) Except as provided by the certificate of formation  
21 of a domestic real estate investment trust, a sale, lease, pledge,  
22 mortgage, assignment, transfer, or other conveyance of an interest  
23 in real property or other assets of the real estate investment trust  
24 does not require the approval or consent of the shareholders of the  
25 real estate investment trust unless the transaction constitutes a  
26 sale of all or substantially all of the assets of the real estate  
27 investment trust.

1 (b) A real estate investment trust must approve the sale of  
2 all or substantially all of its assets by complying with this  
3 section.

4 (c) The trust managers of the real estate investment trust  
5 shall adopt a resolution that approves the sale of all or  
6 substantially all of the assets of the real estate investment trust  
7 and:

8 (1) recommends that the sale of all or substantially  
9 all of the assets of the real estate investment trust be approved by  
10 the shareholders of the real estate investment trust; or

11 (2) directs that the sale of all or substantially all  
12 of the assets of the real estate investment trust be submitted to  
13 the shareholders for approval without recommendation if the trust  
14 managers determine for any reason not to recommend approval of the  
15 sale.

16 (d) The sale of all or substantially all of the assets of the  
17 real estate investment trust shall be submitted to the shareholders  
18 of the real estate investment trust for approval as provided by this  
19 subchapter. The trust managers may place conditions on the  
20 submission of the proposed sale to the shareholders.

21 (e) If the trust managers approve the sale of all or  
22 substantially all of the assets of the real estate investment trust  
23 but do not adopt a resolution recommending that the proposed sale be  
24 approved by the shareholders of the real estate investment trust,  
25 the trust managers shall communicate to the shareholders the reason  
26 for the trust managers' determination to submit the proposed sale  
27 to shareholders without a recommendation.

1           (f) The shareholders of the real estate investment trust  
2 shall approve the sale of all or substantially all of the assets of  
3 the real estate investment trust as provided by this subchapter.

4           (g) After the approval of the sale by the shareholders, the  
5 trust managers may abandon the sale of all or substantially all of  
6 the assets of the real estate investment trust, subject to the  
7 rights of a third party under a contract relating to the assets,  
8 without further action or approval by the shareholders. (TREITA  
9 24.10, 24.20(A) (part).)

10           Sec. 200.406. GENERAL PROCEDURE FOR SUBMISSION TO  
11 SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a  
12 fundamental business transaction involving a real estate  
13 investment trust is required to be submitted to the shareholders of  
14 the real estate investment trust under this subchapter, the real  
15 estate investment trust shall notify each shareholder of the real  
16 estate investment trust that the fundamental business transaction  
17 is being submitted to the shareholders for approval at a meeting of  
18 shareholders as required by this subchapter, regardless of whether  
19 the shareholder is entitled to vote on the matter.

20           (b) If the fundamental business transaction is a merger,  
21 conversion, or interest exchange, the notice required by Subsection  
22 (a) shall contain or be accompanied by a copy or summary of the plan  
23 of merger, conversion, or interest exchange, as appropriate, and  
24 the notice required by Section 10.355.

25           (c) The notice of the meeting must:

26               (1) be given not later than the 21st day before the  
27 date of the meeting; and

1           (2) state that the purpose, or one of the purposes, of  
2 the meeting is to consider the fundamental business transaction.  
3 (TREITA 23.30(D), 24.20(A) (part).)

4           Sec. 200.407. GENERAL VOTE REQUIREMENT FOR APPROVAL OF  
5 FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this  
6 code or the certificate of formation or bylaws of a real estate  
7 investment trust in accordance with Section 200.261, the  
8 affirmative vote of the holders of at least two-thirds of the  
9 outstanding shares of the real estate investment trust entitled to  
10 vote on a fundamental business transaction is required to approve  
11 the transaction.

12           (b) Unless provided by the certificate of formation or  
13 Section 200.408, shares of a class or series that are not otherwise  
14 entitled to vote on matters submitted to shareholders generally  
15 will not be entitled to vote for the approval of a fundamental  
16 business transaction.

17           (c) Except as provided by this code, if a class or series of  
18 shares of a real estate investment trust is entitled to vote on a  
19 fundamental business transaction as a class or series, in addition  
20 to the vote required under Subsection (a), the affirmative vote of  
21 the holders of at least two-thirds of the outstanding shares in each  
22 class or series of shares entitled to vote on the fundamental  
23 business transaction as a class or series is required to approve the  
24 transaction.

25           (d) Unless required by the certificate of formation,  
26 approval of a merger by shareholders is not required under this code  
27 for a real estate investment trust that is a party to the plan of

1 merger unless that real estate investment trust is also a party to  
2 the merger. (TREITA 23.30(E), 24.20(A) (part).)

3 Sec. 200.408. CLASS VOTING REQUIREMENTS FOR CERTAIN  
4 FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class  
5 or series of shares of a real estate investment trust is required  
6 for approval of a plan of merger or conversion if:

7 (1) the plan of merger or conversion contains a  
8 provision that would require approval by that class or series of  
9 shares under Section 200.262 if the provision was contained in a  
10 proposed amendment to the real estate investment trust's  
11 certificate of formation; or

12 (2) that class or series of shares is entitled under  
13 the certificate of formation to vote as a class or series on the  
14 plan of merger or conversion.

15 (b) Separate voting by a class or series of shares of a real  
16 estate investment trust is required for approval of a plan of  
17 exchange if:

18 (1) shares of that class or series are to be exchanged  
19 under the terms of the plan of exchange; or

20 (2) that class or series is entitled under the  
21 certificate of formation to vote as a class or series on the plan of  
22 exchange.

23 (c) Separate voting by a class or series of shares of a real  
24 estate investment trust is required for approval of a sale of all or  
25 substantially all of the assets of the real estate investment trust  
26 if that class or series of shares is entitled under the certificate  
27 of formation to vote as a class or series on the sale of the real

1 estate investment trust's assets. (TREITA 23.30(F), 24.20(A)  
2 (part).)

3 Sec. 200.409. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN  
4 FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the real  
5 estate investment trust's certificate of formation, a plan of  
6 merger is not required to be approved by the shareholders of a real  
7 estate investment trust if:

8 (1) the real estate investment trust is the sole  
9 surviving real estate investment trust in the merger;

10 (2) the certificate of formation of the real estate  
11 investment trust following the merger will not differ from the real  
12 estate investment trust's certificate of formation before the  
13 merger;

14 (3) immediately after the effective date of the  
15 merger, each shareholder of the real estate investment trust whose  
16 shares were outstanding immediately before the effective date of  
17 the merger will hold the same number of shares, with identical  
18 designations, preferences, limitations, and relative rights;

19 (4) the sum of the voting power of the number of voting  
20 shares outstanding immediately after the merger and the voting  
21 power of securities that may be acquired on the conversion or  
22 exercise of securities issued under the merger does not exceed by  
23 more than 20 percent the voting power of the total number of voting  
24 shares of the real estate investment trust that are outstanding  
25 immediately before the merger; and

26 (5) the sum of the number of participating shares that  
27 are outstanding immediately after the merger and the number of



1 participating shares that may be acquired on the conversion or  
2 exercise of securities issued under the merger does not exceed by  
3 more than 20 percent the total number of participating shares of the  
4 real estate investment trust that are outstanding immediately  
5 before the merger.

6 (b) Unless required by the certificate of formation, a plan  
7 of merger effected under Section 10.005 or 10.006 does not require  
8 the approval of the shareholders of the real estate investment  
9 trust. (TREITA 23.30(G) (part).)

10 Sec. 200.410. RIGHTS OF DISSENT AND APPRAISAL. A  
11 shareholder of a domestic real estate investment trust has the  
12 rights of dissent and appraisal under Subchapter H, Chapter 10,  
13 with respect to a fundamental business transaction. (TREITA 25.10,  
14 25.20, 25.30.)

15 [Sections 200.411-200.450 reserved for expansion]

16 SUBCHAPTER J. SUPPLEMENTAL WINDING UP AND TERMINATION  
17 PROVISIONS

18 Sec. 200.451. APPROVAL OF VOLUNTARY WINDING UP. A real  
19 estate investment trust must approve a voluntary winding up under  
20 Chapter 11 by the affirmative vote of the shareholders in  
21 accordance with Section 200.261. (TREITA 19.10 (part).)

22 Sec. 200.452. APPROVAL OF REINSTATEMENT, CANCELLATION, OR  
23 REVOCATION OF VOLUNTARY WINDING UP. A real estate investment trust  
24 may reinstate its existence under Section 11.202, revoke a  
25 voluntary decision to wind up under Section 11.151, or cancel an  
26 event requiring winding up under Section 11.152 by the affirmative  
27 vote of the shareholders in accordance with Section 200.261.

1 (New.)

2 Sec. 200.453. RESPONSIBILITY FOR WINDING UP. If a real  
3 estate investment trust determines or is required to wind up, the  
4 trust managers shall manage the winding up of the business or  
5 affairs of the real estate investment trust. (TREITA 19.10  
6 (part).)

7 [Sections 200.454-200.500 reserved for expansion]

8 SUBCHAPTER K. MISCELLANEOUS PROVISIONS

9 Sec. 200.501. EXAMINATION OF RECORDS. (a) On written  
10 demand stating a proper purpose, a shareholder of record of a real  
11 estate investment trust for at least six months immediately  
12 preceding the shareholder's demand, or a holder of record of at  
13 least five percent of all of the outstanding shares of a real estate  
14 investment trust, is entitled to examine and copy, at a reasonable  
15 time, the real estate investment trust's relevant books and records  
16 of account, minutes, and share transfer records. The examination  
17 may be conducted in person or through an agent or attorney.

18 (b) This section does not impair the power of a court, on the  
19 presentation of proof of proper purpose by a shareholder, to compel  
20 the production for examination by the shareholder of the books and  
21 records of account, minutes, and share transfer records of a real  
22 estate investment trust, regardless of the period during which the  
23 shareholder was a record holder and regardless of the number of  
24 shares held by the person. (TREITA 18.10(B), (C).)

25 Sec. 200.502. JOINDER OF SHAREHOLDERS NOT REQUIRED. The  
26 joinder of shareholders of a real estate investment trust is not  
27 required for any sale, lease, mortgage, or other disposition of all

1 or part of the assets of the real estate investment trust. (TREITA  
2 17.10.)

3 Sec. 200.503. TAX LAW REQUIREMENTS. In connection with a  
4 real estate investment trust qualifying or attempting to qualify as  
5 a real estate investment trust under the Internal Revenue Code and  
6 the regulations adopted under the Internal Revenue Code, a  
7 provision of this chapter is subject to the provisions of the  
8 Internal Revenue Code or the regulations relating to or governing  
9 real estate investment trusts adopted under those provisions if:

10 (1) the provision of this chapter is contrary to or  
11 inconsistent with the federal provisions or regulations;

12 (2) the federal provisions or regulations require a  
13 real estate investment trust to take any action required to secure  
14 or maintain its status as a real estate investment trust under the  
15 federal provisions or regulations; or

16 (3) the federal provisions or regulations prohibit the  
17 real estate investment trust from taking any action required to  
18 secure or maintain its status as a real estate investment trust  
19 under the federal provision or regulation. (TREITA 4.10(I).)

## 20 TITLE 6. ASSOCIATIONS

### 21 CHAPTER 251. COOPERATIVE ASSOCIATIONS

#### 22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 251.001. DEFINITIONS. In this chapter:

24 (1) "Cooperative basis" means that net savings, after  
25 payment of any investment dividends or after provision for separate  
26 funds has been made as required or authorized by law, the  
27 certificate of formation, or bylaws, are:

1 (A) allocated or distributed to a member patron  
2 or to each patron in proportion to patronage; or

3 (B) retained by the entity for:

4 (i) actual or potential expansion of the  
5 entity's services;

6 (ii) the reduction of charges to patrons;

7 or

8 (iii) any other purpose consistent with the  
9 entity's nonprofit character.

10 (2) "Invested capital" means funds invested in a  
11 cooperative association by an investor with the expectation of  
12 receiving an investment dividend.

13 (3) "Investment dividend" means the return on invested  
14 capital or on membership capital derived from the net savings of the  
15 cooperative association.

16 (4) "Membership capital" means the funds of a  
17 cooperative association derived from members of the cooperative  
18 association generally as a requirement of membership or in lieu of  
19 patronage dividends. The term does not include deposits or loans  
20 from members.

21 (5) "Net savings" means the total income of a  
22 cooperative association less the costs of operation.

23 (6) "Patronage dividend" means a share of the net  
24 savings distributed among members of the cooperative association on  
25 the basis of patronage, as provided by the certificate of  
26 formation.

27 (7) "Savings returns" means the amount returned by a

1 cooperative association to patrons of a cooperative association in  
2 proportion to patronage or otherwise. (CAA 2(3), (4), (5), (6),  
3 (7), (8), (9).)

4 Sec. 251.002. APPLICABILITY OF NONPROFIT CORPORATION  
5 PROVISIONS. (a) A provision of Title 1 and Chapters 20 and 22  
6 governing nonprofit corporations applies to a cooperative  
7 association.

8 (b) Notwithstanding Subsection (a), this chapter controls  
9 over any conflicting provision of Title 1 and Chapters 20 and 22  
10 governing nonprofit corporations. (CAA 3.)

11 Sec. 251.003. EXEMPTION. This chapter does not apply to a  
12 corporation or association organized on a cooperative basis under a  
13 statute of this state other than this chapter unless that other  
14 statute specifically states that this chapter does apply. (CAA 45;  
15 TNPCA 10.04.A (part), C; TMCLA 1.03.)

16 [Sections 251.004-251.050 reserved for expansion]

17 SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

18 Sec. 251.051. ORGANIZATION MEETING. After a cooperative  
19 association's certificate of formation is filed, the cooperative  
20 association shall hold an organization meeting in accordance with  
21 Section 22.104. (CAA 9(c).)

22 Sec. 251.052. AMENDMENT OF CERTIFICATE OF FORMATION. (a)  
23 The board of directors of a cooperative association may propose an  
24 amendment to the cooperative association's certificate of  
25 formation by a two-thirds vote of the board members. The members of  
26 a cooperative association may petition to amend the certificate of  
27 formation as provided by the bylaws.

1 (b) Not later than the 31st day before the date of the  
2 meeting, the secretary shall:

3 (1) send notice of a meeting to consider a proposed  
4 amendment to each member of the cooperative association at the  
5 member's last known address; or

6 (2) post notice of a meeting to consider a proposed  
7 amendment in a conspicuous place in all principal places of  
8 activity of the cooperative association.

9 (c) The notice required by Subsection (b) must include the  
10 full text of the proposed amendment and the text of the part of the  
11 certificate of formation to be amended.

12 (d) To be approved, an amendment must be adopted by the  
13 affirmative vote of two-thirds of the members voting on the  
14 amendment.

15 (e) Not later than the 30th day after the date an amendment  
16 is adopted by the members of a cooperative association, the  
17 cooperative association shall file a certificate of amendment with  
18 the secretary of state in accordance with Chapter 4. The  
19 certificate of amendment must be:

20 (1) signed by an authorized officer of the cooperative  
21 association; and

22 (2) in the form required by Section 3.052. (CAA 10.)

23 Sec. 251.053. BYLAWS. (a) Unless the certificate of  
24 formation or bylaws of a cooperative association require a greater  
25 majority, the bylaws may be adopted, amended, or repealed by a  
26 majority vote of the cooperative association's members voting on  
27 the matter.

1 (b) Except as provided by this code, the bylaws may contain:

2 (1) requirements for admission to membership;

3 (2) requirements for disposal of a member's interest  
4 on cessation of membership;

5 (3) the time, place, and manner of calling and  
6 conducting meetings;

7 (4) the number or percentage of the members  
8 constituting a quorum;

9 (5) the number, qualifications, powers, duties, and  
10 term of directors and officers;

11 (6) the method of electing, removing, and filling a  
12 vacancy of directors and officers;

13 (7) the division or classification, if any, of  
14 directors to provide for staggered terms;

15 (8) the compensation, if any, of the directors;

16 (9) the number of directors necessary to constitute a  
17 quorum;

18 (10) the method for distributing the net savings;

19 (11) a requirement that each officer or employee of  
20 the cooperative association who handles funds or securities be  
21 bonded;

22 (12) other discretionary provisions of this chapter,  
23 Title 1, and Chapters 20 and 22; and

24 (13) any other provision incident to a purpose or  
25 activity of the cooperative association. (CAA 11, 12.)

26 [Sections 251.054-251.100 reserved for expansion]

27 SUBCHAPTER C. MANAGEMENT

1           Sec. 251.101. BOARD OF DIRECTORS. (a) Except as provided by  
2 Subsections (b) and (c), a cooperative association is managed by a  
3 board of directors in accordance with Chapter 22.

4           (b) The board shall contain at least five directors elected  
5 by and from the cooperative association's members. A director:

6                 (1) serves a term not to exceed three years as provided  
7 by the bylaws; and

8                 (2) holds office until the director is removed or the  
9 director's successor is elected.

10          (c) The bylaws of a cooperative association may:

11                 (1) apportion the number of directors among the units  
12 into which the cooperative association may be divided; and

13                 (2) provide for the election of the directors by the  
14 respective units to which the directors are apportioned.

15          (d) An executive committee of the board of directors may be  
16 elected in the manner and with the powers and duties specified by  
17 the certificate of formation or bylaws. (CAA 21(a), (b), (c).)

18          Sec. 251.102. OFFICERS. (a) The directors of a cooperative  
19 association shall annually elect, unless otherwise provided by the  
20 bylaws, the following officers for the cooperative association:

21                 (1) a president;

22                 (2) one or more vice presidents; and

23                 (3) a secretary - and treasurer or a  
24 secretary-treasurer.

25          (b) Any two or more offices, other than the offices of  
26 president and secretary, may be held by the same person.

27          (c) The officers of a cooperative association may be



1 designated by other titles as provided by the certificate of  
2 formation or the bylaws of the cooperative association.

3 (d) A committee duly designated by the board of directors  
4 may perform the functions of any office, and the functions of any  
5 two or more officers may be performed by a single committee,  
6 including the functions of both president and secretary. (CAA 22.)

7 Sec. 251.103. REMOVAL OF DIRECTORS AND OFFICERS. (a) A  
8 director or officer of a cooperative association may be removed  
9 from office in the manner provided by the certificate of formation  
10 or bylaws of the cooperative association.

11 (b) If the certificate of formation or bylaws do not provide  
12 for the person's removal, a director or officer may be removed with  
13 cause by a vote of a majority of the members voting at a regular or  
14 special meeting. The director or officer who is to be removed is  
15 entitled to be heard at the meeting.

16 (c) Except as provided by the certificate of formation or  
17 bylaws, a vacancy on the board of directors caused by removal shall  
18 be filled by a director elected in the same manner provided by the  
19 bylaws for the election of directors. (CAA 23.)

20 Sec. 251.104. REFERENDUM. (a) The certificate of formation  
21 or bylaws of a cooperative association may provide for a referendum  
22 on any action undertaken by the cooperative association's board of  
23 directors if the referendum is:

24 (1) requested by petition of 10 percent or more of all  
25 of the members of the cooperative association; or

26 (2) requested and approved by the vote of at least a  
27 majority of the directors of the cooperative association.

1           (b) The proposition to be voted on in a referendum  
2 authorized under Subsection (a) must be submitted to the members of  
3 the cooperative association for consideration within the time  
4 specified in the document authorizing the referendum.

5           (c) A right of a third party that has vested between the time  
6 of the action and the time of the referendum is not impaired by the  
7 referendum results. (CAA 24.)

8           [Sections 251.105-251.150 reserved for expansion]

9                               SUBCHAPTER D. MEMBERSHIP

10          Sec. 251.151. ELIGIBILITY AND ADMISSION. A person, an  
11 unincorporated group or other person organized on a cooperative  
12 basis, or a nonprofit group may be admitted to membership in a  
13 cooperative association only if the person meets the qualifications  
14 for eligibility stated in the certificate of formation or bylaws of  
15 the cooperative association. (CAA 26(a).)

16          Sec. 251.152. EXPULSION. (a) A member of a cooperative  
17 association may be expelled by the vote of a majority of the  
18 cooperative association's members voting at a regular or special  
19 meeting.

20               (b) Not later than the 11th day before the date of the  
21 meeting, the cooperative association shall give the member written  
22 notice of the charges. The member is entitled to be heard at the  
23 meeting in person or by counsel.

24               (c) If the cooperative association votes to expel a member,  
25 the cooperative association's board of directors shall cause the  
26 cooperative association to purchase the member's capital holdings  
27 at par value if the purchase does not jeopardize the cooperative

1 association's solvency. (CAA 33.)

2 Sec. 251.153. SUBSCRIBERS. (a) A person is a subscriber of  
3 a cooperative association only if the person is:

4 (1) eligible for membership in the cooperative  
5 association under Section 251.151; and

6 (2) legally obligated to purchase a share or  
7 membership in the cooperative association.

8 (b) The certificate of formation or bylaws of a cooperative  
9 association may state whether and the conditions under which voting  
10 rights or other membership rights are granted to a subscriber of the  
11 cooperative association. (CAA 27, as amended Acts 72nd Leg., R.S.,  
12 Ch. 897.)

13 Sec. 251.154. LIABILITY. (a) Except as provided by  
14 Subsection (b), a member or subscriber of a cooperative association  
15 is not jointly or severally liable for a debt of the cooperative  
16 association. A subscriber is liable for any unpaid amount on the  
17 subscriber's membership certificates or invested capital  
18 certificates.

19 (b) A subscriber who assigns the subscriber's interest in  
20 membership certificates or invested capital certificates is  
21 jointly and severally liable with the assignee until the  
22 appropriate certificates are fully paid. (CAA 32.)

23 [Sections 251.155-251.200 reserved for expansion]

24 SUBCHAPTER E. SHARES

25 Sec. 251.201. SHARE AND MEMBERSHIP CERTIFICATES: ISSUANCE  
26 AND CONTENTS. (a) A cooperative association may not issue a  
27 certificate for membership capital or for invested capital until

1 any par value of the certificate has been paid in full.

2 (b) Each certificate for membership capital issued by a  
3 cooperative association must contain a statement of the  
4 requirements of Sections 251.202(a) and (b), 251.254, and 251.255.

5 (c) Each certificate for invested capital issued by a  
6 cooperative association must contain a statement of the  
7 restrictions on transferability as provided by the cooperative  
8 association's bylaws. (CAA 28.)

9 Sec. 251.202. TRANSFER OF SHARES AND MEMBERSHIP;  
10 WITHDRAWAL. (a) A member who decides to withdraw from a cooperative  
11 association shall make a written offer to sell the member's  
12 membership certificates to the cooperative association's board of  
13 directors.

14 (b) Not later than the 90th day after the date the directors  
15 receive an offer under Subsection (a), the directors may cause the  
16 cooperative association to purchase the holdings by paying the  
17 member the par value of the certificates and the directors shall  
18 cause the cooperative association to reissue or cancel the shares  
19 after purchasing the holdings. The directors shall cause the  
20 cooperative association to purchase the shares if a majority of the  
21 cooperative association's members voting at a regular or special  
22 meeting vote to require the purchase.

23 (c) An investor owning investor certificates must sell,  
24 assign, or convey the certificates in accordance with the  
25 cooperative association's bylaws. If an investor fails to sell,  
26 assign, or convey investor certificates in accordance with the  
27 bylaws, the cooperative association on written notice to its

1 directors shall repurchase the certificates by paying the investor  
2 the par value of the certificate plus all accrued investment  
3 dividends. The certificates must be repurchased not later than the  
4 90th day after the date the cooperative association receives notice  
5 of the failure. (CAA 29.)

6 Sec. 251.203. SHARE AND MEMBERSHIP CERTIFICATES; RECALL.

7 (a) The bylaws of a cooperative association may authorize the  
8 cooperative association's board of directors to recall during a  
9 specified time and in accordance with the bylaws the membership  
10 certificates of a member who fails to patronize the cooperative  
11 association. The board may use the reserve funds to recall, at par  
12 value, the membership certificates of any member in excess of the  
13 amount required for membership.

14 (b) After the board of directors of a cooperative  
15 association recalls a membership certificate under Subsection (a),  
16 membership in the cooperative association is terminated and the  
17 board shall cause the cooperative association to reissue or cancel  
18 the certificate. The board of directors may not recall membership  
19 certificates if recalling the certificates would jeopardize the  
20 cooperative association's solvency.

21 (c) The board of directors may use the reserve funds to  
22 recall and repurchase the investment certificates of an investor at  
23 par value plus any investment dividends due.

24 (d) The bylaws of a cooperative association may establish  
25 specific procedures, terms, and conditions for recalls and  
26 repurchases of investment certificates. (CAA 30.)

27 Sec. 251.204. CERTIFICATES; ATTACHMENT. The minimum amount

1 necessary for membership in a cooperative association, not to  
2 exceed \$50, is exempt from attachment, execution, or garnishment  
3 for the debts of a member of a cooperative association. If a  
4 member's holdings are subject to attachment, execution, or  
5 garnishment, the directors of the cooperative association may admit  
6 the purchaser to membership or may purchase the holdings at par  
7 value. (CAA 31.)

8 [Sections 251.205-251.250 reserved for expansion]

9 SUBCHAPTER F. MEETINGS AND VOTING

10 Sec. 251.251. MEETINGS. (a) Regular meetings of members of  
11 a cooperative association shall be held at least once a year as  
12 prescribed by the cooperative association's bylaws.

13 (b) A special meeting of the members of a cooperative  
14 association may be requested by a majority vote of the directors or  
15 by written petition of at least one-tenth of the membership of the  
16 cooperative association. The secretary shall call a special  
17 meeting to be held 30 days after receipt of the request for a  
18 special meeting. (CAA 13(a).)

19 Sec. 251.252. NOTICE OF SPECIAL MEETING. The notice of a  
20 special meeting of the members of a cooperative association shall  
21 state the purpose of the meeting. (CAA 14.)

22 Sec. 251.253. MEETINGS BY UNITS OF MEMBERSHIP. (a) The  
23 certificate of formation or bylaws of a cooperative association may  
24 provide for the holding of meetings by units of the membership of  
25 the cooperative association and may provide for:

26 (1) a method of transmitting the votes cast at unit  
27 meetings to the central meeting;

1           (2) a method of representation of units of the  
2 membership by the election of delegates to the central meeting; or

3           (3) a combination of both methods.

4           (b) Except as otherwise provided by the certificate of  
5 formation or bylaws, a meeting by a unit of the membership shall be  
6 called and held in the same manner as a regular meeting of the  
7 members. (CAA 15.)

8           Sec. 251.254. ONE MEMBER--ONE VOTE. (a) Except as provided  
9 by Subsection (b), a member of a cooperative association has one  
10 vote.

11           (b) If a cooperative association includes among its  
12 membership another cooperative association or a group that is  
13 organized on a cooperative basis, the voting rights of the  
14 cooperative association member or group member may be prescribed by  
15 the certificate of formation or bylaws of the cooperative  
16 association.

17           (c) Any voting agreement or other device that is made to  
18 evade the one-member-one-vote rule is not enforceable. (CAA 16.)

19           Sec. 251.255. NO PROXY. A member is not entitled to vote by  
20 proxy. (CAA 17.)

21           Sec. 251.256. VOTING BY MAIL. (a) The certificate of  
22 formation or bylaws of a cooperative association may contain the  
23 procedures in Subsection (b) or (c), or both, for voting by mail.

24           (b) With notice of a meeting sent to members of the  
25 cooperative association, the secretary may include a copy of a  
26 proposal to be offered at the meeting. If a mail vote is returned to  
27 the cooperative association within the specified number of days,

1 the mail vote shall be counted with the votes cast at the meeting.

2 (c) The secretary may send to a member of the cooperative  
3 association who is absent from a meeting an exact copy of the  
4 proposal considered at the meeting. If the vote is returned to the  
5 cooperative association within the specified number of days, the  
6 mail vote is counted with the votes cast at the meeting.

7 (d) The certificate of formation or bylaws may state whether  
8 and to what extent mail votes are counted in computing a quorum.  
9 (CAA 18.)

10 Sec. 251.257. VOTING BY MAIL OR BY DELEGATES. (a) If a  
11 cooperative association has provided for voting by mail or by  
12 delegates, a provision of this chapter referring to votes cast by  
13 members of the cooperative association applies to votes cast by  
14 mail or by delegates.

15 (b) A delegate may not vote by mail. (CAA 19, 20.)

16 [Sections 251.258-251.300 reserved for expansion]

17 SUBCHAPTER G. CAPITAL AND NET SAVINGS

18 Sec. 251.301. LIMITATIONS ON RETURN ON CAPITAL. (a) Except  
19 as otherwise provided by the cooperative association's bylaws, an  
20 investment dividend of a cooperative association may not be  
21 cumulative and may not exceed eight percent of investment capital.

22 (b) Total investment dividends distributed for a fiscal  
23 year may not exceed 50 percent of the net savings for the period.  
24 (CAA 25.)

25 Sec. 251.302. ALLOCATION AND DISTRIBUTION OF NET SAVINGS.

26 (a) At least once each year the members or directors of a  
27 cooperative association, as provided by the certificate of



1 formation or bylaws of the cooperative association, shall apportion  
2 the net savings of the cooperative association in the following  
3 order:

4 (1) subject to Section 251.301, investment dividends  
5 payable from the surplus of the total assets over total liabilities  
6 may be paid on invested capital or, if authorized by the bylaws, may  
7 be paid on the membership certificates;

8 (2) a portion of the remainder, as determined by the  
9 certificate of formation or bylaws, may be allocated to an  
10 educational fund to be used in teaching cooperation;

11 (3) a portion of the remainder may be allocated to  
12 funds for the general welfare of the members of the cooperative  
13 association;

14 (4) a portion of the remainder may be allocated to  
15 retained earnings; and

16 (5) the remainder shall be allocated at the same  
17 uniform rate to each patron of the cooperative association in  
18 proportion to individual patronage as follows:

19 (A) for a member patron, the proportionate amount  
20 of savings return distributed to the member may be any combination  
21 of cash, property, membership certificates, or investment  
22 certificates; and

23 (B) for a subscriber patron, the patron's  
24 proportionate amount of savings returns as provided by the  
25 certificate of formation or bylaws may be distributed to the  
26 subscriber patron or credited to the subscriber patron's account  
27 until the amount of capital subscribed for has been fully paid.

1 (b) This section does not prevent a cooperative association  
2 engaged in rendering services from disposing of the net savings  
3 from the rendering of services in a manner that lowers the fees  
4 charged for services or furthers the common benefit of the members.

5 (c) A cooperative association may adopt a system in which:

6 (1) the payment of savings returns that would  
7 otherwise be distributed are deferred for a fixed period; or

8 (2) the savings returns distributed are partly in cash  
9 or partly in shares, to be retired at a fixed future date, in the  
10 order of the shares' serial numbers or issuance dates. (CAA 34.)

11 [Sections 251.303-251.350 reserved for expansion]

12 SUBCHAPTER H. REPORTS AND RECORDS

13 Sec. 251.351. RECORDKEEPING. A cooperative association  
14 shall keep books and records relating to the cooperative  
15 association's business operation in accordance with standard  
16 accounting practices. (CAA 35(a).)

17 Sec. 251.352. REPORTS TO MEMBERS. (a) A cooperative  
18 association shall submit a written report to its members at the  
19 annual meeting of the cooperative association. The annual report  
20 must contain:

- 21 (1) a balance sheet;
- 22 (2) an income and expense statement;
- 23 (3) the amount and nature of the cooperative  
24 association's authorized, subscribed, and paid-in capital;
- 25 (4) the total number of shareholders;
- 26 (5) the number of shareholders who were admitted to or  
27 withdrew from the association during the year;

1           (6) the par value of the association's shares;  
2           (7) the rate at which any investment dividends have  
3 been paid; and

4           (8) if the cooperative association does not issue  
5 shares:

6                   (A) the total number of members;

7                   (B) the number of members who were admitted to or  
8 withdrew from the association during the year; and

9                   (C) the amount of membership fees received.

10           (b) The directors shall appoint a committee composed of  
11 members who are not principal bookkeepers, accountants, or  
12 employees of the cooperative association to review the cooperative  
13 association.

14           (c) The committee appointed under Subsection (b) shall  
15 report on the quality of the annual report required by this section  
16 and the bookkeeping system of the cooperative association at the  
17 annual meeting. (CAA 35(b), (c), (d).)

18           Sec. 251.353. ANNUAL REPORT OF FINANCIAL CONDITION. (a)  
19 This section applies only to a cooperative association that has at  
20 least 100 members or at least \$20,000 in annual business.

21           (b) Not later than the 120th day after the date on which the  
22 association closes its business each year, a cooperative  
23 association shall file in the association's registered office a  
24 report of the association's financial condition stating:

25                   (1) the name of the association;

26                   (2) the address of the association's principal office;

27                   (3) the name, address, occupation, and date of

1 expiration of the term of office of each officer and director;

2 (4) any compensation paid by the association to each  
3 officer or director of the association;

4 (5) the amount and nature of the authorized,  
5 subscribed, and paid-in capital;

6 (6) the total number of shareholders;

7 (7) the number of shareholders who were admitted to or  
8 withdrew from the association during the year;

9 (8) the par value of the association's shares;

10 (9) the rate at which any investment dividends have  
11 been paid; and

12 (10) if the association has no shares:

13 (A) the total number of members;

14 (B) the number of members who were admitted to or  
15 withdrew from the association during the year; and

16 (C) the amount of membership fees received.

17 (c) The report required by Subsection (b) must:

18 (1) include a balance sheet and income and expense  
19 statement of the cooperative association; and

20 (2) be signed by the president and secretary.

21 (d) A cooperative association that has at least 3,000  
22 members or at least \$750,000 in annual business shall file a copy of  
23 the report required by this section with the secretary of state.

24 (e) A person commits an offense if the person signs a report  
25 that is required by this section and contains a materially false  
26 statement that the person knows is false. An offense under this  
27 subsection is a misdemeanor punishable by:

1 (1) a fine of not less than \$25 or more than \$200;

2 (2) confinement in county jail for a term of not less  
3 than 30 days or more than one year; or

4 (3) both the fine and confinement. (CAA 36.)

5 Sec. 251.354. FAILURE TO FILE REPORT. (a) If a cooperative  
6 association required by Section 251.353 to file a copy of a report  
7 with the secretary of state does not file the report within the  
8 prescribed time, the secretary of state shall send written notice  
9 of the requirement by registered mail to the cooperative  
10 association. The notice must be sent to the cooperative  
11 association's principal office not later than the 60th day after  
12 the date the report becomes due.

13 (b) If a cooperative association is required by Section  
14 251.353 to file a report at its registered office but not with the  
15 secretary of state and fails to file the report within the  
16 prescribed time, the secretary of state or any member of the  
17 cooperative association may send written notice of the requirement  
18 by registered mail to the cooperative association's principal  
19 office.

20 (c) If the cooperative association does not file the report  
21 before the 61st day after the date notice is sent under Subsection  
22 (a) or (b), a member of the cooperative association or the attorney  
23 general may seek a writ of mandamus against the cooperative  
24 association and the appropriate officer or officers to compel the  
25 filing of the report. The court shall require the cooperative  
26 association or the officer who is determined to be at fault to pay  
27 the expenses of the proceeding, including attorney's fees. (CAA

1 37.)

2 [Sections 251.355-251.400 reserved for expansion]

3 SUBCHAPTER I. WINDING UP AND TERMINATION

4 Sec. 251.401. VOLUNTARY WINDING UP AND TERMINATION. (a) A  
5 cooperative association may wind up and terminate its affairs in  
6 accordance with Chapter 11 and Sections 22.301-22.303.

7 (b) If a cooperative association is directed to wind up and  
8 liquidate its affairs, three members of the cooperative association  
9 elected by a vote of at least a majority of the members voting shall  
10 be designated as trustees on behalf of the cooperative association  
11 to:

12 (1) pay debts;

13 (2) liquidate the cooperative association's assets  
14 within the time set in the trustees' designation or any extension of  
15 time; and

16 (3) distribute the cooperative association's assets in  
17 the manner provided by Section 251.403. (CAA 38(a), (c) (part).)

18 Sec. 251.402. EXECUTION OF CERTIFICATE OF TERMINATION. An  
19 officer of a cooperative association or one or more of the persons  
20 designated as a liquidating trustee under Section 251.401 shall  
21 execute the certificate of termination on behalf of the cooperative  
22 association. (CAA 38(a) (part); TNPCA 6.05.A (part).)

23 Sec. 251.403. DISTRIBUTION OF ASSETS. Subject to Sections  
24 11.052 and 11.053(a), the trustees designated under Section 251.401  
25 shall distribute the cooperative association's assets in the  
26 following order:

27 (1) by returning the par value of the investors'

1 capital to investors;

2 (2) by returning the amounts paid on subscriptions to  
3 subscribers for invested capital;

4 (3) by returning the amount of patronage dividends  
5 credited to patrons' accounts to the patrons;

6 (4) by returning to members their membership capital;  
7 and

8 (5) by distributing any surplus in the manner provided  
9 by the certificate of formation:

10 (A) among the patrons who have been members or  
11 subscribers of the cooperative association during the six years  
12 preceding the date of dissolution, on the basis of patronage during  
13 that period;

14 (B) as a gift to any cooperative association or  
15 other nonprofit enterprise designated in the certificate of  
16 formation; or

17 (C) by a combination of both methods of  
18 distribution. (CAA 38(c).)

19 Sec. 251.404. INVOLUNTARY TERMINATION. A suit for  
20 involuntary termination of a cooperative association organized  
21 under this chapter may be instituted for the causes and prosecuted  
22 in the manner provided by Chapter 11. The assets of a cooperative  
23 association that is involuntarily terminated shall be distributed  
24 in accordance with Section 251.403. (CAA 38(b).)

25 [Sections 251.405-251.450 reserved for expansion]

26 SUBCHAPTER J. MISCELLANEOUS PROVISIONS

27 Sec. 251.451. EXEMPTION FROM TAXES. A cooperative

1 association organized under this chapter is exempt from the  
2 franchise tax and license fees imposed by the state or a political  
3 subdivision of the state, except that a cooperative association is  
4 exempt from the franchise tax imposed by Chapter 171, Tax Code, only  
5 if the cooperative association is exempt under that chapter. (CAA  
6 44.)

7           Sec. 251.452. USE OF NAME "COOPERATIVE." (a) Only a  
8 cooperative association governed by this chapter, a group organized  
9 on a cooperative basis under another law of this state, or a foreign  
10 entity operating on a cooperative basis and authorized to do  
11 business in this state may use the term "cooperative" or any  
12 abbreviation or derivation of the term "cooperative" as part of its  
13 business name or represent itself, in advertising or otherwise, as  
14 conducting business on a cooperative basis.

15           (b) A person commits an offense if the person violates  
16 Subsection (a). An offense under this subsection is a misdemeanor  
17 punishable by:

18           (1) a fine of not less than \$25 or more than \$200 for  
19 the first month in which the violation occurs;

20           (2) a fine of not more than \$200 for each month during  
21 which a violation occurs after the first month;

22           (3) confinement in the county jail for not less than 30  
23 days or more than one year; or

24           (4) a combination of those punishments.

25           (c) The attorney general may sue to enjoin a violation of  
26 this section.

27           (d) If a court renders a judgment that a person who used the



1 term "cooperative" before September 1, 1975, is not organized on a  
2 cooperative basis but is authorized to continue to use the term, the  
3 business shall place immediately after its name the words "does not  
4 comply with the cooperative association law of Texas" in the same  
5 kind of type and in letters not less than two-thirds the size of the  
6 letters used in the word "cooperative."

7 (e) Notwithstanding this section, The University  
8 Cooperative Society, a domestic nonprofit corporation related to  
9 The University of Texas, may continue to use the word "cooperative"  
10 in its name. (CAA 39.)

11 CHAPTER 252. UNINCORPORATED NONPROFIT ASSOCIATIONS

12 Sec. 252.001. DEFINITIONS. In this chapter:

13 (1) "Member" means a person who, under the rules or  
14 practices of a nonprofit association, may participate in the  
15 selection of persons authorized to manage the affairs of the  
16 nonprofit association or in the development of policy of the  
17 nonprofit association.

18 (2) "Nonprofit association" means an unincorporated  
19 organization, other than one created by a trust, consisting of  
20 three or more members joined by mutual consent for a common,  
21 nonprofit purpose. A form of joint tenancy, tenancy in common, or  
22 tenancy by the entirety does not by itself establish a nonprofit  
23 association, regardless of whether the co-owners share use of the  
24 property for a nonprofit purpose. (TUUNAA 2.)

25 Sec. 252.002. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND  
26 EQUITY. Principles of law and equity supplement this chapter unless  
27 displaced by a particular provision of this chapter. (TUUNAA 3.)

1           Sec. 252.003. TERRITORIAL APPLICATION. Real and personal  
2 property in this state may be acquired, held, encumbered, and  
3 transferred by a nonprofit association, regardless of whether the  
4 nonprofit association or a member has any other relationship to  
5 this state. (TUUNAA 4.)

6           Sec. 252.004. REAL AND PERSONAL PROPERTY; NONPROFIT  
7 ASSOCIATION AS BENEFICIARY. (a) A nonprofit association in its  
8 name may acquire, hold, encumber, or transfer an estate or interest  
9 in real or personal property.

10           (b) A nonprofit association may be a beneficiary of a trust,  
11 contract, or will. (TUUNAA 5.)

12           Sec. 252.005. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

13 (a) A nonprofit association may execute and record a statement of  
14 authority to transfer an estate or interest in real property in the  
15 name of the nonprofit association.

16 (b) An estate or interest in real property in the name of a  
17 nonprofit association may be transferred by a person so authorized  
18 in a statement of authority recorded in the county clerk's office in  
19 the county in which a transfer of the property would be recorded.

20 (c) A statement of authority must contain:

21           (1) the name of the nonprofit association;

22           (2) the address in this state, including the street  
23 address, if any, of the nonprofit association, or, if the nonprofit  
24 association does not have an address in this state, its address out  
25 of state; and

26           (3) the name or title of a person authorized to  
27 transfer an estate or interest in real property held in the name of

1 the nonprofit association.

2 (d) A statement of authority must be executed in the same  
3 manner as a deed by a person who is not the person authorized to  
4 transfer the estate or interest.

5 (e) The county clerk may collect a fee for recording a  
6 statement of authority in the amount authorized for recording a  
7 transfer of real property.

8 (f) An amendment, including a cancellation, of a statement  
9 of authority must meet the requirements for execution and recording  
10 of an original statement. Unless canceled earlier, a recorded  
11 statement of authority or its most recent amendment is canceled by  
12 operation of law on the fifth anniversary of the date of the most  
13 recent recording.

14 (g) If the record title to real property is in the name of a  
15 nonprofit association and the statement of authority is recorded in  
16 the county clerk's office of the county in which a transfer of real  
17 property would be recorded, the authority of the person named in a  
18 statement of authority is conclusive in favor of a person who gives  
19 value without notice that the person lacks authority. (TUUNAA 6.)

20 Sec. 252.006. LIABILITY IN TORT AND CONTRACT. (a) A  
21 nonprofit association is a legal entity separate from its members  
22 for the purposes of determining and enforcing rights, duties, and  
23 liabilities in contract and tort.

24 (b) A person is not liable for a breach of a nonprofit  
25 association's contract or for a tortious act or omission for which a  
26 nonprofit association is liable merely because the person is a  
27 member, is authorized to participate in the management of the

1 affairs of the nonprofit association, or is a person considered as a  
2 member by the nonprofit association.

3 (c) A tortious act or omission of a member or other person  
4 for which a nonprofit association is liable is not imputed to a  
5 person merely because the person is a member of the nonprofit  
6 association, is authorized to participate in the management of the  
7 affairs of the nonprofit association, or is a person considered as a  
8 member by the nonprofit association.

9 (d) A member of, or a person considered as a member by, a  
10 nonprofit association may assert a claim against the nonprofit  
11 association. A nonprofit association may assert a claim against a  
12 member or a person considered as a member by the nonprofit  
13 association. (TUUNAA 7.)

14 Sec. 252.007. CAPACITY TO ASSERT AND DEFEND; STANDING. (a)  
15 A nonprofit association, in its name, may institute, defend,  
16 intervene, or participate in a judicial, administrative, or other  
17 governmental proceeding or in an arbitration, mediation, or any  
18 other form of alternative dispute resolution.

19 (b) A nonprofit association may assert a claim in its name  
20 on behalf of members of the nonprofit association if:

21 (1) one or more of the nonprofit association's members  
22 have standing to assert a claim in their own right;

23 (2) the interests the nonprofit association seeks to  
24 protect are germane to its purposes; and

25 (3) neither the claim asserted nor the relief  
26 requested requires the participation of a member. (TUUNAA 8.)

27 Sec. 252.008. EFFECT OF JUDGMENT OR ORDER. A judgment or

1 order against a nonprofit association is not by itself a judgment or  
2 order against a member or a person considered as a member by the  
3 nonprofit association. (TUUNAA 9.)

4 Sec. 252.009. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE  
5 NONPROFIT ASSOCIATION. (a) If a nonprofit association has been  
6 inactive for three years or longer, or a shorter period as specified  
7 in a document of the nonprofit association, a person in possession  
8 or control of personal property of the nonprofit association may  
9 transfer the custody of the property:

10 (1) if a document of a nonprofit association specifies  
11 a person to whom transfer is to be made under these circumstances,  
12 to that person; or

13 (2) if no person is specified, to a nonprofit  
14 association or nonprofit corporation pursuing broadly similar  
15 purposes, or to a government or governmental subdivision, agency,  
16 or instrumentality.

17 (b) Notwithstanding the above, if a nonprofit association  
18 is classified under the Internal Revenue Code as a 501(c)(3)  
19 organization or is or holds itself out to be established or  
20 operating for a charitable, religious, or educational purpose, as  
21 defined by Section 501(c)(3), Internal Revenue Code, then any  
22 distribution must be made to another nonprofit association or  
23 nonprofit corporation with similar charitable, religious, or  
24 educational purposes. (TUUNAA 10.)

25 Sec. 252.010. BOOKS AND RECORDS. (a) A nonprofit  
26 association shall keep correct and complete books and records of  
27 account for at least three years after the end of each fiscal year

1 and shall make the books and records available on request to members  
2 of the association for inspection and copying.

3 (b) The attorney general may inspect, examine, and make  
4 copies of the books, records, and other documents the attorney  
5 general considers necessary and may investigate the association to  
6 determine if a violation of any law of this state has occurred.  
7 (TUUNAA 11.)

8 Sec. 252.011. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF  
9 PROCESS. (a) A nonprofit association may file in the office of the  
10 secretary of state a statement appointing an agent authorized to  
11 receive service of process.

12 (b) A statement appointing an agent must contain:

13 (1) the name of the nonprofit association;

14 (2) the federal tax identification number of the  
15 nonprofit association, if applicable;

16 (3) the address in this state, including the street  
17 address, if any, of the nonprofit association or, if the nonprofit  
18 association does not have an address in this state, its address out  
19 of state; and

20 (4) the name of the person in this state authorized to  
21 receive service of process and the person's address, including the  
22 street address, in this state.

23 (c) A statement appointing an agent must be signed by a  
24 person authorized to manage the affairs of the nonprofit  
25 association. The statement must also be signed by the person  
26 appointed agent, who by signing accepts the appointment. The  
27 appointed agent may resign by filing a resignation in the office of

1 the secretary of state and giving notice to the nonprofit  
2 association.

3 (d) The secretary of state may collect a fee for filing a  
4 statement appointing an agent to receive service of process, an  
5 amendment, a cancellation, or a resignation in the amount charged  
6 for filing similar documents.

7 (e) An amendment to a statement appointing an agent to  
8 receive service of process must meet the requirements for execution  
9 of an original statement.

10 (f) A statement appointing an agent may be canceled by  
11 filing with the secretary of state a written notice of cancellation  
12 executed by a person authorized to manage the affairs of the  
13 nonprofit association. A notice of cancellation must contain:

14 (1) the name of the nonprofit association;

15 (2) the federal tax identification number of the  
16 nonprofit association, if applicable;

17 (3) the date of filing of the nonprofit association's  
18 statement appointing the agent; and

19 (4) a current street address, if any, of the nonprofit  
20 association in this state or, if the nonprofit association does not  
21 have an address in this state, its address out of state.

22 (g) The secretary of state may adopt forms and procedural  
23 rules for filing documents under this section. (TUUNAA 12.)

24 Sec. 252.012. CLAIM NOT ABATED BY CHANGE. A claim for relief  
25 against a nonprofit association does not abate merely because of a  
26 change in the members or persons authorized to manage the affairs of  
27 the nonprofit association. (TUUNAA 13.)

1           Sec. 252.013. SUMMONS AND COMPLAINT; SERVICE. (a) In an  
2 action or proceeding against a nonprofit association, a summons and  
3 complaint must be served on an agent authorized by appointment to  
4 receive service of process, an officer, a managing or general  
5 agent, or a person authorized to participate in the management of  
6 its affairs, in accordance with the Civil Practice and Remedies  
7 Code.

8           (b) Not later than the 10th day after the date of a request  
9 by the attorney general to an officer or board member of a nonprofit  
10 association or to the nonprofit association, the nonprofit  
11 association shall provide to the attorney general the names,  
12 current addresses, and telephone numbers of:

13                 (1) each agent authorized to receive service of  
14 process on behalf of the nonprofit association; and

15                 (2) each officer, managing or general agent, and other  
16 person authorized to participate in the management of the affairs  
17 of the nonprofit association. (TUUNAA 14.)

18           Sec. 252.014. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
19 This chapter shall be applied and construed to make uniform the law  
20 with respect to the subject of this chapter among states enacting  
21 it. (TUUNAA 15.)

22           Sec. 252.015. TRANSITION CONCERNING REAL AND PERSONAL  
23 PROPERTY. If, before September 1, 1995, an estate or interest in  
24 real or personal property was by the terms of the transfer  
25 purportedly transferred to a nonprofit association, but under the  
26 law the estate or interest was vested in a fiduciary such as  
27 officers of the nonprofit association to hold the estate or



1 interest for members of the nonprofit association, on or after  
2 September 1, 1995, the fiduciary may transfer the estate or  
3 interest to the nonprofit association in its name, or the nonprofit  
4 association, by appropriate proceedings, may require that the  
5 estate or interest be transferred to it in its name. (TUUNAA 16.)

6 Sec. 252.016. EFFECT ON OTHER LAW. This chapter replaces  
7 existing law with respect to matters covered by this chapter but  
8 does not affect other law covering unincorporated nonprofit  
9 associations. (TUUNAA 18.)

10 Sec. 252.017. CHAPTER CONTROLLING. (a) Except as provided  
11 by Subsection (b), the only provisions of this code that apply to or  
12 govern a nonprofit association are the provisions of this chapter.

13 (b) Chapters 1 and 4 and, if a nonprofit association  
14 designates an agent for service of process, Subchapter E, Chapter  
15 5, apply to a nonprofit association. (New.)

## 16 TITLE 7. PROFESSIONAL ENTITIES

### 17 CHAPTER 301. PROVISIONS RELATING TO

#### 18 PROFESSIONAL ENTITIES

19 Sec. 301.001. APPLICABILITY OF TITLE. (a) This title  
20 applies only to a professional entity or foreign professional  
21 entity.

22 (b) This title does not affect:

23 (1) the professional or confidential relationship  
24 between a person who provides a professional service and the  
25 recipient of that service; or

26 (2) a person's legal remedies against another person  
27 who commits an error, omission, negligent or incompetent act, or

1 malfeasance while providing a professional service.

2 (c) This title does not apply to partnerships or limited  
3 liability partnerships. (TPCA 16 (part); TPAA 7; TLLCA 11.05  
4 (part).)

5 Sec. 301.002. CONFLICTS OF LAW. This title prevails over a  
6 conflicting provision of Title 1, 2, or 3. (TPCA 5 (part); TPAA 25  
7 (part).)

8 Sec. 301.003. DEFINITIONS. In this title:

9 (1) "Licensed mental health professional" means a  
10 person, other than a physician, who is licensed by the state to  
11 engage in the practice of psychology or psychiatric nursing or to  
12 provide professional therapy or counseling services.

13 (2) "Professional association" means an association,  
14 as distinguished from either a partnership or a corporation, that  
15 is:

16 (A) formed for the purpose of providing the  
17 professional service rendered by a doctor of medicine, doctor of  
18 osteopathy, doctor of podiatry, dentist, chiropractor,  
19 optometrist, therapeutic optometrist, or licensed mental health  
20 professional; and

21 (B) governed as a professional entity under this  
22 title.

23 (3) "Professional corporation" means a corporation  
24 that is:

25 (A) formed for the purpose of providing a  
26 professional service that by law a corporation governed by Title 2  
27 is prohibited from rendering; and

1 (B) governed as a professional entity under this  
2 title.

3 (4) "Professional entity" means a professional  
4 association, professional corporation, or professional limited  
5 liability company.

6 (5) "Professional individual," with respect to a  
7 professional entity, means an individual who is licensed to provide  
8 in this state or another jurisdiction the same professional service  
9 as is rendered by that professional entity.

10 (6) "Professional limited liability company" means a  
11 limited liability company formed for the purpose of providing a  
12 professional service and governed as a professional entity under  
13 this title.

14 (7) "Professional organization," with respect to a  
15 professional corporation or a professional limited liability  
16 company, means a person other than an individual, whether  
17 nonprofit, for-profit, domestic, or foreign and including a  
18 nonprofit corporation or nonprofit association, that renders the  
19 same professional service as the professional corporation or  
20 professional limited liability company only through owners,  
21 members, managerial officials, employees, or agents, each of whom  
22 is a professional individual or professional organization.

23 (8) "Professional service" means any type of service  
24 that requires, as a condition precedent to the rendering of the  
25 service, the obtaining of a license in this state, including the  
26 personal service rendered by an architect, attorney, certified  
27 public accountant, dentist, physician, public accountant, or

1 veterinarian. (TLLCA 11.01.A(3), 11.01.B; TPCA 3(a), (b), 4(b), 12  
2 (part), 15; TPAA 2, as amended Acts 77th Leg., R.S., Chs. 508 and  
3 883, 3.)

4 Sec. 301.004. AUTHORIZED PERSON. For purposes of this  
5 title, a person is an authorized person with respect to:

6 (1) a professional association if the person is a  
7 professional individual; and

8 (2) a professional corporation or a professional  
9 limited liability company if the person is a professional  
10 individual or professional organization. (TPCA 12 (part), 15; TPAA  
11 10; TLLCA 11.01.B(2), (3).)

12 Sec. 301.005. APPLICATION FOR REGISTRATION OF FOREIGN  
13 PROFESSIONAL ENTITY. (a) When required by Chapter 9, a foreign  
14 professional entity must file an application for registration to  
15 transact business in this state.

16 (b) The secretary of state may accept an application filed  
17 under Subsection (a) only if:

18 (1) the name and purpose of the foreign professional  
19 entity stated in the application comply with this title and  
20 Chapters 2 and 5; and

21 (2) the application states that the jurisdiction of  
22 formation of the foreign professional entity permits reciprocal  
23 admission of an entity formed under this code. (TPCA 19A(a) (part),  
24 (b); TLLCA 11.07.A (part).)

25 Sec. 301.006. LICENSE REQUIRED TO PROVIDE PROFESSIONAL  
26 SERVICE. (a) A professional association or foreign professional  
27 association may provide a professional service in this state only

1 through owners, managerial officials, employees, or agents, each of  
2 whom:

3 (1) is a professional individual; and

4 (2) is licensed in this state to provide the same  
5 professional service provided by the entity.

6 (b) A professional entity, other than a professional  
7 association, may provide a professional service in this state only  
8 through owners, managerial officials, employees, or agents, each of  
9 whom is an authorized person.

10 (c) An individual may not, under the guise of employment,  
11 provide a professional service in this state unless the individual  
12 is licensed to provide the professional service under the laws of  
13 this state.

14 (d) This section may not be construed to prohibit a  
15 professional entity or foreign professional entity from employing  
16 individuals who do not, according to general custom and practice,  
17 ordinarily provide a professional service, including clerks,  
18 secretaries, bookkeepers, technicians, nurses, or assistants.  
19 (TPCA 15, 19A(a) (part); TPAA 2(B)(1); TLLCA 11.04, 11.07.A.)

20 Sec. 301.007. CERTAIN REQUIREMENTS TO BE OWNER, GOVERNING  
21 PERSON, OR OFFICER. (a) A person may be an owner of a professional  
22 entity or a governing person of a professional limited liability  
23 company only if the person is an authorized person.

24 (b) An individual may be an officer of a professional entity  
25 or a governing person of a professional association or professional  
26 corporation only if the individual is a professional individual.  
27 (TPCA 9, 10, 12; TPAA 2(B)(1), 9(C), 10; TLLCA 11.03.A (part).)

1           Sec. 301.008. DUTIES AND POWERS OF OWNER OR MANAGERIAL  
2 OFFICIAL WHO CEASES TO BE LICENSED; PURCHASE OF OWNERSHIP INTEREST.

3           (a) A managerial official of a professional entity who ceases to  
4 satisfy the requirements of Section 301.007 shall promptly resign  
5 the person's position and employment with the entity.

6           (b) An owner of a professional entity who ceases to be an  
7 authorized person as required by Section 301.007 shall promptly  
8 relinquish the person's ownership interest in the entity.

9           (c) A person who succeeds to the ownership interest of an  
10 owner shall promptly relinquish the person's financial interest in  
11 the entity if the person is not an authorized person as required by  
12 Section 301.007.

13           (d) A professional entity shall purchase or cause to be  
14 purchased the ownership interest in the entity of a person who is  
15 required to relinquish the person's financial interest in the  
16 entity under this section. The price and terms of a purchase of an  
17 ownership interest required under this subsection may be provided  
18 by the governing documents of the entity or an applicable  
19 agreement.

20           (e) A person who owns all of the outstanding ownership  
21 interests in a professional entity but is required under this  
22 section to relinquish the person's financial interest in the entity  
23 may act as a managerial official or owner of the entity only for the  
24 purpose of winding up the affairs of the entity, including selling  
25 the outstanding ownership interests and other assets of the entity.

26 (TPCA 14; TLLCA 11.03.B, C.)

27           Sec. 301.009. TRANSFER OF OWNERSHIP INTEREST. Except as

1 limited by the governing documents of the professional entity or an  
2 applicable agreement, an ownership interest in a professional  
3 entity may be transferred only to:

- 4 (1) an owner of the entity;
- 5 (2) the entity itself; or
- 6 (3) an authorized person. (TPCA 12 (part); TPAA 10;  
7 TLLCA 11.03.A (part).)

8 Sec. 301.010. LIABILITY. (a) A professional entity is  
9 jointly and severally liable for an error, omission, negligent or  
10 incompetent act, or malfeasance committed by a person who:

11 (1) is an owner, managerial official, employee, or  
12 agent of the entity; and

13 (2) while providing a professional service for the  
14 entity or during the course of the person's employment, commits the  
15 error, omission, negligent or incompetent act, or malfeasance.

16 (b) An owner, managerial official, employee, or agent of a  
17 professional entity other than an owner, managerial official,  
18 employee, or agent liable under Subsection (a) is not subject to the  
19 same liability imposed on the professional entity under this  
20 section.

21 (c) If a person described by Subsection (a) is a  
22 professional organization, the professional organization and the  
23 professional entity are jointly and severally liable for the error,  
24 omission, negligent or incompetent act, or malfeasance committed by  
25 the person, or the person's owner, member, managerial official,  
26 employee, or agent, while providing a professional service for the  
27 professional entity. (TPCA 16 (part); TPAA 24 (part); TLLCA 11.05

1 (part).)

2           Sec. 301.011. EXEMPTION FROM SECURITIES LAWS. (a) A sale,  
3 issuance, or offer for sale of an ownership interest in a  
4 professional entity to a person authorized under this title to own  
5 an ownership interest in the professional entity is exempt from any  
6 state law, other than this code, that regulates the sale, issuance,  
7 or offer for sale of securities.

8           (b) A transaction described by Subsection (a) does not  
9 require the approval of or other action by a state official or  
10 regulatory agency authorized to regulate the sale, issuance, or  
11 offer for sale of securities. (TPCA 19; TLLCA 11.06.)

12           Sec. 301.012. JOINT PRACTICE BY CERTAIN PROFESSIONALS. (a)  
13 Persons licensed as doctors of medicine and persons licensed as  
14 doctors of osteopathy by the Texas State Board of Medical Examiners  
15 and persons licensed as podiatrists by the Texas State Board of  
16 Podiatric Medical Examiners may jointly form and own a professional  
17 association or a professional limited liability company to perform  
18 professional services that fall within the scope of practice of  
19 those practitioners.

20           (b) Professionals, other than physicians, engaged in  
21 related mental health fields such as psychology, clinical social  
22 work, licensed professional counseling, and licensed marriage and  
23 family therapy may form a professional entity that is jointly owned  
24 by those practitioners to perform professional services that fall  
25 within the scope of practice of those practitioners.

26           (c) Persons licensed as doctors of medicine and persons  
27 licensed as doctors of osteopathy by the Texas State Board of



1 Medical Examiners and persons licensed as optometrists or  
2 therapeutic optometrists by the Texas Optometry Board may, subject  
3 to the provisions regulating those professionals, jointly form and  
4 own a professional association or a professional limited liability  
5 company to perform professional services that fall within the scope  
6 of practice of those practitioners.

7 (d) Only a physician, optometrist, or therapeutic  
8 optometrist may have an ownership interest in a professional  
9 association or professional limited liability company formed under  
10 Subsection (c).

11 (e) An entity formed under Subsection (c) is not prohibited  
12 from making one or more payments to an owner's estate following the  
13 owner's death under an agreement with the owner or as otherwise  
14 authorized or required by law.

15 (f) When doctors of medicine, osteopathy, and podiatry, or  
16 doctors of medicine, osteopathy, and optometry or therapeutic  
17 optometry, or mental health professionals form a professional  
18 entity as provided by Subsections (a), (b), and (c), the authority  
19 of each of the practitioners is limited by the scope of practice of  
20 the respective practitioners and none can exercise control over the  
21 other's clinical authority granted by their respective licenses,  
22 either through agreements, bylaws, directives, financial  
23 incentives, or other arrangements that would assert control over  
24 treatment decisions made by the practitioner.

25 (g) The state agencies exercising regulatory control over  
26 professions to which this section applies continue to exercise  
27 regulatory authority over their respective licenses. (TPCA 4(b);

1 TPAA 2(B); TLLCA 11.01.A(3), (4).)

2 CHAPTER 302. PROVISIONS RELATING TO  
3 PROFESSIONAL ASSOCIATIONS

4 Sec. 302.001. APPLICABILITY OF CERTAIN PROVISIONS  
5 GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20  
6 and 21 governing a for-profit corporation apply to a professional  
7 association, unless there is a conflict with this title. (TPAA 25.)

8 Sec. 302.002. DURATION OF PROFESSIONAL ASSOCIATION. A  
9 professional association continues:

10 (1) for all purposes as a separate entity independent  
11 of the association's members until:

12 (A) the expiration of the period of duration  
13 stated in the certificate of formation; or

14 (B) the association is wound up and terminated in  
15 the manner provided by the certificate of formation or, if the  
16 certificate of formation does not provide a manner for winding up  
17 and termination, by a two-thirds vote of the association's members;  
18 and

19 (2) in existence notwithstanding:

20 (A) the death, insanity, incompetency, felony  
21 conviction, resignation, withdrawal, transfer of ownership  
22 interest, or expulsion of a member other than the last surviving  
23 member of the association;

24 (B) the admission of a new member or the transfer  
25 of ownership interest to a new or existing member; or

26 (C) the occurrence of an event that would require  
27 the winding up of a partnership under state law or similar

1 circumstances. (TPAA 8(B).)

2 Sec. 302.003. AMENDMENT OF CERTIFICATE OF FORMATION. (a) A  
3 professional association may amend the association's certificate  
4 of formation as provided by:

5 (1) Chapter 3;

6 (2) the procedure for amendment stated in the  
7 certificate of formation; or

8 (3) if the certificate of formation does not provide a  
9 procedure for amending the certificate, a two-thirds vote of the  
10 association's members.

11 (b) A professional association is not required to amend the  
12 association's certificate of formation to reflect a change in  
13 membership or a transfer of ownership interests in the association.  
14 (TPAA 14.)

15 Sec. 302.004. ADOPTION OF BYLAWS; DELEGATION OF AUTHORITY.

16 (a) The members of a professional association may adopt bylaws for  
17 the association.

18 (b) The authority to adopt bylaws for a professional  
19 association granted under Subsection (a) may be delegated under the  
20 certificate of formation to the governing authority of the  
21 association. (TPAA 9(D).)

22 Sec. 302.005. GOVERNING AUTHORITY. (a) A professional  
23 association shall be governed by:

24 (1) a board of directors; or

25 (2) an executive committee.

26 (b) The governing authority of a professional association  
27 shall be elected by the members of the association. (TPAA 9(A).)

1           Sec. 302.006. MEMBERS' VOTING RIGHTS. A member of a  
2 professional association is entitled to cast a vote at a meeting of  
3 the members as provided by the certificate of formation of the  
4 association. (TPAA 9(E).)

5           Sec. 302.007. ELECTION OF OFFICERS. The governing authority  
6 of a professional association shall elect the officers of the  
7 association. (TPAA 9(A).)

8           Sec. 302.008. OFFICER AND GOVERNING PERSON ELIGIBILITY  
9 REQUIREMENTS. (a) Only a member of the professional association is  
10 eligible to serve as an officer or governing person of a  
11 professional association.

12           (b) Except as provided by Subsection (c), a person is not  
13 required to be a governing person of a professional association to  
14 serve as an officer of the association.

15           (c) Only a governing person of a professional association is  
16 eligible to serve as the president of the professional association.  
17 (TPAA 9(C).)

18           Sec. 302.009. EMPLOYMENT OF AGENTS AND EMPLOYEES. The  
19 officers of a professional association may employ agents or  
20 employees for the association as the officers consider advisable.  
21 (TPAA 9(F).)

22           Sec. 302.010. LIMITATION ON MEMBER'S POWER TO BIND  
23 ASSOCIATION. A member of a professional association is not entitled  
24 to bind the association within the scope of the association's  
25 business or profession merely by virtue of being a member of the  
26 professional association. (TPAA 9(B).)

27           Sec. 302.011. DIVISION OF PROFITS. The members of a

1 professional association shall divide the profits derived from the  
2 association in the manner provided by the governing documents of  
3 the association. (TPAA 2(A), as amended Acts 77th Leg., R.S., Chs.  
4 508 and 883.)

5 Sec. 302.012. ANNUAL STATEMENT REQUIRED. (a) In June of  
6 each year, a professional association shall file with the secretary  
7 of state a statement that:

8 (1) lists:

9 (A) the name and address of each member of the  
10 association; and

11 (B) the name of each officer and governing person  
12 of the association; and

13 (2) states that each member of the association is  
14 licensed to provide the same type of professional service provided  
15 by the association.

16 (b) The statement required by this section must be executed  
17 by an officer of the association on behalf of the association. (TPAA  
18 21.)

19 Sec. 302.013. WINDING UP AND TERMINATION; CERTIFICATE OF  
20 TERMINATION. (a) A professional association may wind up and  
21 terminate the association's business as provided by:

22 (1) the association's certificate of formation; or

23 (2) if the certificate of formation does not provide  
24 for the winding up and termination of the association, a two-thirds  
25 vote of the association's members.

26 (b) Except as provided by Subsection (c), a certificate of  
27 termination filed in accordance with Chapter 11 must be executed by

1 an officer of the professional association on behalf of the  
2 association.

3 (c) If a professional association does not have any living  
4 officer, the certificate of termination must be executed by the  
5 legal representative of the last surviving officer of the  
6 association. (TPAA 8(B) (part), 18 (part).)

7 CHAPTER 303. PROVISIONS RELATING TO  
8 PROFESSIONAL CORPORATIONS

9 Sec. 303.001. APPLICABILITY OF CERTAIN PROVISIONS  
10 GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20  
11 and 21 governing a for-profit corporation apply to a professional  
12 corporation, unless there is a conflict with this title. (TPCA 5  
13 (part).)

14 Sec. 303.002. AUTHORITY AND LIABILITY OF SHAREHOLDER. (a)  
15 A shareholder of a professional corporation is not required to  
16 supervise the performance of duties by an officer or employee of the  
17 corporation.

18 (b) A shareholder of a professional corporation is subject  
19 to no greater liability than a shareholder of a for-profit  
20 corporation. (TPCA 5 (part).)

21 Sec. 303.003. NOTICE OF RESTRICTION ON TRANSFER OF SHARES.  
22 Any restriction on the transfer of shares in a professional  
23 corporation that is imposed by the governing documents of the  
24 corporation or an applicable agreement must be:

25 (1) noted on each certificate representing the shares;

26 or

27 (2) incorporated by reference in the manner provided

1 by Chapter 21. (TPCA 12 (part).)

2 Sec. 303.004. REDEMPTION OF SHARES; PRICE AND TERMS. (a) A  
3 professional corporation may redeem shares of a shareholder,  
4 including a deceased shareholder.

5 (b) The price and other terms of a redemption of shares may  
6 be:

7 (1) agreed to between the board of directors of the  
8 professional corporation and the shareholder or the shareholder's  
9 personal representative; or

10 (2) specified in the governing documents of the  
11 professional corporation or an applicable agreement. (TPCA 13.)

12 Sec. 303.005. EXISTENCE OF PROFESSIONAL CORPORATION BEFORE  
13 WINDING UP AND TERMINATION. A professional corporation continues to  
14 exist until the winding up and termination of the corporation as  
15 provided by Chapter 11 without regard to:

16 (1) the death, incompetency, bankruptcy, resignation,  
17 withdrawal, retirement, or expulsion of any shareholder of the  
18 corporation;

19 (2) the transfer of shares to a new shareholder; or

20 (3) the occurrence of an event requiring the winding  
21 up of a partnership. (TPCA 17 (part).)

22 Sec. 303.006. WINDING UP AND TERMINATION OF PROFESSIONAL  
23 CORPORATION. A shareholder of a professional corporation may not  
24 wind up the affairs of and terminate the corporation independently  
25 of other shareholders of the corporation. (TPCA 17 (part).)

26 CHAPTER 304. PROVISIONS RELATING TO PROFESSIONAL  
27 LIMITED LIABILITY COMPANIES

1           Sec. 304.001. APPLICABILITY OF CERTAIN PROVISIONS  
2 GOVERNING LIMITED LIABILITY COMPANIES. Title 3 applies to a  
3 professional limited liability company, unless there is a conflict  
4 with this title. (TLLCA 11.01.B(2).)

5                   TITLE 8. MISCELLANEOUS AND TRANSITION PROVISIONS

6                           CHAPTER 401. GENERAL PROVISIONS

7           Sec. 401.001. DEFINITIONS. In this title:

8                   (1) "Mandatory application date" means:

9                           (A) for an entity subject to this code under  
10 Section 402.001, January 1, 2006;

11                           (B) for an entity subject to this code under  
12 Section 402.003 or 402.004, the date of completion of the action  
13 required by that section but no earlier than January 1, 2006; and

14                           (C) for any other entity, January 1, 2010.

15                   (2) "Prior law" means the applicable law in effect  
16 before January 1, 2006.

17                   CHAPTER 402. MISCELLANEOUS AND TRANSITION PROVISIONS

18           Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. At the  
19 effective date of this code, this code applies to:

20                   (1) a domestic entity formed on or after the effective  
21 date of this code;

22                   (2) a foreign filing entity or other foreign entity  
23 that has not registered with the secretary of state to transact  
24 business in this state before the effective date of this code; and

25                   (3) a foreign nonfiling entity.

26           Sec. 402.002. EARLY EFFECTIVENESS OF FEES. On or after the  
27 effective date of this code, the fees required by Chapter 4 apply to



1 all filings made with the secretary of state, including comparable  
2 filings under prior law, regardless of whether an entity is subject  
3 to or has adopted this code. The intent of this section is to:

4 (1) require a filing fee for all documents filed under  
5 either this code or the prior law without regard to the difference  
6 in designation of the document; and

7 (2) make the filing fees described by Subdivision (1)  
8 uniform from the effective date of this code.

9 Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC  
10 ENTITY. (a) A domestic entity formed before the effective date of  
11 this code may voluntarily elect to adopt and become subject to this  
12 code by:

13 (1) complying with the procedures to amend its  
14 governing documents to adopt this code and, if necessary, to cause  
15 its governing documents to comply with this code; and

16 (2) if the domestic entity is a filing entity, filing  
17 with the secretary of state in accordance with Chapter 4:

18 (A) a statement that the filing entity is  
19 electing to adopt this code; and

20 (B) if necessary, a certificate of amendment that  
21 would cause its certificate of formation to comply with this code.

22 (b) If amendments to the governing documents of a domestic  
23 entity that are necessary to conform the governing documents to  
24 this code would not require, under prior law, the vote or consent of  
25 the owners or members of the entity, this code and any amendment to  
26 the governing documents required by this section may be adopted by  
27 the governing authority only in the manner provided for an

1 amendment of the particular governing document.

2           Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN  
3 ENTITY. A foreign filing entity registered with the secretary of  
4 state to transact business in this state before the effective date  
5 of this code may voluntarily elect to adopt and become subject to  
6 this code by filing with the secretary of state in accordance with  
7 Chapter 4:

8                   (1) a statement that the foreign filing entity is  
9 electing to adopt this code; and

10                   (2) an amendment to its application for registration  
11 that would cause its application for registration to comply with  
12 this code.

13           Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES ON  
14 MANDATORY APPLICATION DATE. On January 1, 2010, if a domestic  
15 filing entity formed before the effective date of this code or a  
16 foreign filing entity registered with the secretary of state to  
17 transact business in this state before the effective date of this  
18 code has not taken the actions specified by Section 402.003(a) or  
19 402.004 to elect to adopt this code:

20                   (1) this code applies to the entity and all actions  
21 taken by the managerial officials, owners, or members of the  
22 entity, except as otherwise expressly provided by this title;

23                   (2) the entity is not considered to have failed to  
24 comply with this code if the entity's certificate of formation or  
25 application for registration, as appropriate, does not comply with  
26 this code;

27                   (3) if the entity is a domestic filing entity, the

1 entity shall conform its certificate of formation to the  
2 requirements of this code when it next files an amendment to its  
3 certificate of formation; and

4 (4) if the entity is a foreign filing entity, the  
5 entity shall conform its application for registration to the  
6 requirements of this code when it next files an amendment to its  
7 application for registration.

8 Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND  
9 TRANSACTIONS. (a) Except as otherwise expressly provided by this  
10 title, all of the provisions of this code govern acts, contracts, or  
11 other transactions by an entity subject to this code or its  
12 managerial officials, owners, or members that occur on or after the  
13 mandatory application date. The prior law governs the acts,  
14 contracts, or transactions of the entity or its managerial  
15 officials, owners, or members that occur before the mandatory  
16 application date.

17 (b) No requirement under Subchapter E, Chapter 3, with  
18 respect to matters to be set forth on certificates evidencing  
19 ownership interests of partnerships shall apply to or affect  
20 certificates outstanding when the requirement first becomes  
21 applicable to the certificates, but the requirement applies to all  
22 subsequently issued certificates whether in connection with an  
23 original issue of ownership interests, a transfer of ownership  
24 interests, or otherwise.

25 Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any  
26 proposed indemnification by a domestic entity after the mandatory  
27 application date, regardless of whether the events on which the

1 indemnification is based occurred before or after the mandatory  
2 application date. A statement relating to indemnification  
3 contained in the governing documents of a domestic entity on the  
4 mandatory application date may not be construed as limiting the  
5 indemnification authorized by Chapter 8 unless it expressly states  
6 that is the intent.

7 Sec. 402.008. MEETINGS OF OWNERS AND MEMBERS; CONSENTS;  
8 VOTING OF INTERESTS. (a) Except as provided by Subsection (b) and  
9 regardless of whether a proxy or consent was executed by an owner or  
10 member before the mandatory application date, Chapter 6 and any  
11 other applicable provision of this code apply to:

12 (1) a meeting of owners or members held on or after the  
13 mandatory application date;

14 (2) an action undertaken by owners or members under a  
15 written consent that takes effect on or after the mandatory  
16 application date;

17 (3) a vote cast at a meeting described by Subdivision  
18 (1); and

19 (4) consent given for an action described by  
20 Subdivision (2).

21 (b) Prior law applies to a meeting of owners or members and  
22 to any vote cast at a meeting described by this section if the  
23 meeting was initially called for a date before the mandatory  
24 application date and notice of the meeting was given to owners or  
25 members entitled to vote at the meeting.

26 Sec. 402.009. MEETINGS OF GOVERNING AUTHORITY AND  
27 COMMITTEES; CONSENTS. (a) Except as provided by Subsection (b),

1 Chapter 6 and any other applicable provision of this code apply to:

2 (1) a meeting of the governing authority or a  
3 committee of the governing authority held on or after the mandatory  
4 application date;

5 (2) an action undertaken by the governing authority or  
6 a committee of the governing authority under a written consent that  
7 takes effect on or after the mandatory application date;

8 (3) a vote cast at a meeting described by Subdivision  
9 (1); and

10 (4) consent given for an action described by  
11 Subdivision (2).

12 (b) Prior law applies to a meeting of the governing  
13 authority or a committee of the governing authority and to any vote  
14 cast at a meeting described by this section if the meeting was  
15 initially called for a date before the mandatory application date  
16 and notice of the meeting was given to governing persons entitled to  
17 vote at the meeting.

18 Sec. 402.010. SALE OF ASSETS, MERGERS, REORGANIZATIONS,  
19 CONVERSIONS. Chapter 10 and any other applicable provisions of this  
20 code apply to a transaction consummated by an entity after the  
21 mandatory application date, except that if a required approval of  
22 the owners or members of the entity has been given before the  
23 mandatory application date or has been given after the mandatory  
24 application date but at a meeting of owners or members initially  
25 called for a date before the mandatory application date, the  
26 transaction shall be governed by the prior law.

27 Sec. 402.011. WINDING UP AND TERMINATION. (a) Chapter 11

1 applies to:

2 (1) an action for involuntary or judicial winding up  
3 and termination commenced after the mandatory application date; or

4 (2) a voluntary winding up and termination proceeding  
5 initiated after the mandatory application date by:

6 (A) the governing authority;

7 (B) the terms of the governing documents; or

8 (C) applicable law.

9 (b) The prior law governs:

10 (1) an action described by Subsection (a)(1) that is  
11 pending on the mandatory application date; or

12 (2) a proceeding described by Subsection (a)(2)  
13 initiated before the mandatory application date.

14 Sec. 402.012. REGISTRATION OF CERTAIN FOREIGN ENTITIES. A  
15 foreign entity that has transacted intrastate business in this  
16 state before the mandatory application date and that is required by  
17 Chapter 9 to register to transact business is not subject to a  
18 direct or indirect penalty as a result of failure to register under  
19 Chapter 9 if the application for registration is filed not later  
20 than the 30th day after the mandatory application date.

21 Sec. 402.013. ENTITIES UNDER SUSPENSION FOR NONFILING OF  
22 REQUIRED REPORTS OR PAYMENT OF TAXES; APPLICABILITY OF PRIOR LAW.

23 (a) If the rights, privileges, and powers of a domestic filing  
24 entity have been suspended and are still suspended immediately  
25 before the mandatory application date under the prior law, this  
26 code applies to the entity on the mandatory application date.

27 (b) If the rights, privileges, and powers of a domestic

1 filing entity have been suspended and are still suspended under the  
2 Tax Code immediately before the mandatory application date, the  
3 suspension continues to apply to the entity until the rights,  
4 privileges, and powers are restored by the secretary of state under  
5 that code.

6 Sec. 402.014. MAINTENANCE OF PRIOR ACTION. Except as  
7 expressly provided by this title, this code does not apply to an  
8 action or proceeding commenced before the mandatory application  
9 date. Prior law applies to the action or proceeding.

10 SECTION 2. CONFORMING AMENDMENT. Part Eleven, Texas  
11 Business Corporation Act, is amended by adding Article 11.02 to  
12 read as follows:

13 Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as  
14 provided by Title 8, Business Organizations Code, this Act does not  
15 apply to a corporation to which the Business Organizations Code  
16 applies.

17 B. This Act expires January 1, 2010.

18 SECTION 3. CONFORMING AMENDMENT. Part Seven, Texas  
19 Miscellaneous Corporation Laws Act (Article 1302-7.01 et seq.,  
20 Vernon's Texas Civil Statutes), is amended by adding Article 7.09  
21 to read as follows:

22 Art. 7.09. APPLICABILITY; EXPIRATION. A. Except as  
23 provided by Title 8, Business Organizations Code, this Act does not  
24 apply to a corporation to which the Business Organizations Code  
25 applies.

26 B. This Act expires January 1, 2010.

27 SECTION 4. CONFORMING AMENDMENT. The Texas Non-Profit

1 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil  
2 Statutes) is amended by adding Article 11.02 to read as follows:

3 Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as  
4 provided by Title 8, Business Organizations Code, this Act does not  
5 apply to a corporation to which the Business Organizations Code  
6 applies.

7 B. This Act expires January 1, 2010.

8 SECTION 5. CONFORMING AMENDMENT. The Cooperative  
9 Association Act (Article 1396-50.01, Vernon's Texas Civil  
10 Statutes) is amended by adding Section 47 to read as follows:

11 Sec. 47. APPLICABILITY; EXPIRATION. (a) Except as provided  
12 by Title 8, Business Organizations Code, this Act does not apply to  
13 an association to which the Business Organizations Code applies.

14 (b) This Act expires January 1, 2010.

15 SECTION 6. CONFORMING AMENDMENT. The Texas Uniform  
16 Unincorporated Nonprofit Association Act (Article 1396-70.01,  
17 Vernon's Texas Civil Statutes) is amended by adding Section 19 to  
18 read as follows:

19 Sec. 19. APPLICABILITY; EXPIRATION. (a) Except as provided  
20 by Title 8, Business Organizations Code, this Act does not apply to  
21 a nonprofit association to which the Business Organizations Code  
22 applies.

23 (b) This Act expires January 1, 2010.

24 SECTION 7. CONFORMING AMENDMENT. The Texas Professional  
25 Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) is  
26 amended by adding Section 21 to read as follows:

27 Sec. 21. APPLICABILITY; EXPIRATION. (a) Except as provided



1 by Title 8, Business Organizations Code, this Act does not apply to  
2 a professional corporation to which the Business Organizations Code  
3 applies.

4 (b) This Act expires January 1, 2010.

5 SECTION 8. CONFORMING AMENDMENT. The Texas Professional  
6 Association Act (Article 1528f, Vernon's Texas Civil Statutes) is  
7 amended by adding Section 27 to read as follows:

8 Sec. 27. APPLICABILITY; EXPIRATION. (A) Except as provided  
9 by Title 8, Business Organizations Code, this Act does not apply to  
10 a professional association to which the Business Organizations Code  
11 applies.

12 (B) This Act expires January 1, 2010.

13 SECTION 9. CONFORMING AMENDMENT. Part Eight, Texas Limited  
14 Liability Company Act (Article 1528n, Vernon's Texas Civil  
15 Statutes), is amended by adding Article 8.13 to read as follows:

16 Art. 8.13. APPLICABILITY; EXPIRATION. A. Except as  
17 provided by Title 8, Business Organizations Code, this Act does not  
18 apply to a limited liability company to which the Business  
19 Organizations Code applies.

20 B. This Act expires January 1, 2010.

21 SECTION 10. CONFORMING AMENDMENT. Article 13, Texas Revised  
22 Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil  
23 Statutes), is amended by adding Section 13.10 to read as follows:

24 Sec. 13.10. APPLICABILITY; EXPIRATION. (a) Except as  
25 provided by Title 8, Business Organizations Code, this Act does not  
26 apply to a limited partnership to which the Business Organizations  
27 Code applies.

1        (b) This Act expires January 1, 2010.

2        SECTION 11. CONFORMING AMENDMENT. Article XI, Texas Revised  
3 Partnership Act (Article 6132b-11.01 et seq., Vernon's Texas Civil  
4 Statutes), is amended by adding Section 11.05 to read as follows:

5        Sec. 11.05. APPLICABILITY; EXPIRATION. (a) Except as  
6 provided by Title 8, Business Organizations Code, this Act does not  
7 apply to a partnership to which the Business Organizations Code  
8 applies.

9        (b) This Act expires January 1, 2010.

10       SECTION 12. CONFORMING AMENDMENT. The Texas Real Estate  
11 Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes)  
12 is amended by adding Section 29.10 to read as follows:

13       Sec. 29.10. APPLICABILITY; EXPIRATION. (A) Except as  
14 provided by Title 8, Business Organizations Code, this Act does not  
15 apply to a real estate investment trust to which the Business  
16 Organizations Code applies.

17       (B) This Act expires January 1, 2010.

18       SECTION 13. CONFORMING AMENDMENT. Article 1399, Revised  
19 Statutes, is amended to read as follows:

20       Art. 1399. LODGES. The grand lodge of Texas, Ancient, Free  
21 and Accepted Masons, the Grand Royal Arch Chapter of Texas, the  
22 Grand Commandery of Knights Templars of Texas (Masonic); the grand  
23 lodge of the Independent Order of Odd Fellows of Texas, and other  
24 like institutions and orders organized for charitable or benevolent  
25 purposes may, by the consent of their respective bodies expressed  
26 by a resolution or otherwise, become bodies corporate under this  
27 title. Except as provided by Title 8, Business Organizations Code,

1 this article and Articles 1400-1407, Revised Statutes, do not apply  
2 to a grand body to which the Business Organizations Code applies.

3 SECTION 14. CONFORMING AMENDMENT. Chapter 963, Acts of the  
4 70th Legislature, Regular Session, 1987 (Article 1407a, Vernon's  
5 Texas Civil Statutes), is amended by adding Section 9 to read as  
6 follows:

7 Sec. 9. APPLICABILITY. Except as provided by Title 8,  
8 Business Organizations Code, this Act does not apply to a church  
9 benefits board to which the Business Organizations Code applies.

10 SECTION 15. CONFORMING AMENDMENT. Chapter 853, Acts of the  
11 62nd Legislature, Regular Session, 1971 (Article 1528g, Vernon's  
12 Texas Civil Statutes), is amended by adding Section 13 to read as  
13 follows:

14 Sec. 13. APPLICABILITY. Except as provided by Title 8,  
15 Business Organizations Code, this Act does not apply to a business  
16 development corporation to which the Business Organizations Code  
17 applies.

18 SECTION 16. REPEALER. (a) The following Acts and articles  
19 as compiled in Vernon's Texas Civil Statutes are repealed:  
20 Articles 1525, 1526, 1527, 1527a, 1528, 1528a, and 1528h.

21 (b) The following Acts and articles as compiled in Vernon's  
22 Texas Civil Statutes are repealed on January 1, 2010: Articles  
23 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1407a, and  
24 1528g.

25 SECTION 17. EFFECTIVE DATE. This Act takes effect January  
26 1, 2006.

David Newhall

President of the Senate

Tom Craddick

Speaker of the House

I certify that H.B. No. 1156 was passed by the House on April 23, 2003, by a non-record vote.

Robert Honey

Chief Clerk of the House

I certify that H.B. No. 1156 was passed by the Senate on May 13, 2003, by the following vote: Yeas 31, Nays 0.

Lately Shaw

Secretary of the Senate

APPROVED:

29 MAY '03

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2:25 PM CLOCK

MAY 29 2003  
Ann Shea  
Secretary of State