

## TEXAS CORPORATION FORMATION CHECKLIST

1. **Name of the Corporation:** Fill in the proposed company name and two alternate names for the Corporation. Corporation names must include Incorporated, Corporation, Company, or Limited, or an abbreviation (e.g. Inc., Corp., Co., Ltd., etc.). **Use exact punctuation, capitalization, and spacing.**

First Choice: \_\_\_\_\_  
 Second Choice: \_\_\_\_\_  
 Third Choice: \_\_\_\_\_

2. **Address of the Corporation:** Fill in the address of the principal place of business of the Corporation. \_\_\_\_\_

3. **Assumed Names of Corporation:** In the event that the Corporation will be operated or that its business will be conducted under a name other than the complete legal name which appears on the Certificate of Formation, an assumed name certificate should be filed for the use of the operating name (e.g. ABC, Inc. uses letterhead or enters into contracts as "ABC Medical Associates" or "ABC"). Please list any assumed names that the Corporation will use.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. **Purpose of the Corporation:** Fill in the kind of business or assets the Corporation is being formed to operate or hold. If the Corporation is going to operate a business, be sure to indicate the specific types of merchandise or services produced or provided.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. **Identification of Shareholders:** Fill in the full legal name, complete mailing address, and number of Shares of common stock in the Corporation to be issued to of each of the Shareholders of the Corporation. Also, fill in the purchase price to be paid for such shares by the Shareholders. If additional space is needed, include on a separate sheet.

Name:	Address:	Number of Shares of Common Stock:	Purchase Price of Shares:

6. **Identification of Directors:** Fill in the full legal name and complete mailing addresses of each of the initial members of the Board of Directors of the Corporation. If additional space is needed, include on a separate sheet.

Name:	Address:

7. **Identification of Officers:** Fill in the full legal name and complete address of the persons who should serve as the respective officers of the Corporation. At a minimum, the Corporation must have a President and a Secretary. A person can serve in more than one capacity.

Officer:	Name:	Address:
President:		
Vice President:		
Secretary:		
Treasurer:		

8. **Par Value of Shares:** Par value is the minimum price at which the Corporation may issue shares. Many corporations choose to have shares without par value which allows the Corporation additional flexibility in setting the purchase price for shares in the initial issuance. Fill in the par value of the shares of common stock. \_\_\_\_\_

9. **Duration of the Corporation** (check only one option):

- Perpetual existence (default treatment)  
 Definite term (e.g. 5 years) (fill in time period): \_\_\_\_\_  
 Specified termination dated (fill in termination date): \_\_\_\_\_  
 Specified termination event (fill in termination event): \_\_\_\_\_

10. **Registered Agent:** Fill in the complete legal name and mailing address of registered agent. The registered agent may be an individual or an existing company, but must have a brick and mortar address within the State of Texas (a PO Box may not be used as a registered address). The registered agent's role is to accept mailings from the State of Texas and to accept service of process with respect to any lawsuits that may be filed against the Corporation.

Name: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_

11. **Start Date of the Corporation** (cannot be sooner than the date on which the Corporation's certificate of formation is filed with the Texas Secretary of State):
- Date of filing Certificate of Formation
  - Other (fill in date): \_\_\_\_\_
12. **Fiscal Year:** A calendar year fiscal year for the Corporation is standard and will often be required by the IRS. Please select the desired fiscal year for the Corporation (check only one).
- Calendar year
  - Other (fill in the fiscal year start date): \_\_\_\_\_
13. **Annual Meetings of Shareholders and Directors:** When should the shareholder and director annual meetings occur?
- Specific Date (e.g. March 15 of each year) (fill in date): \_\_\_\_\_
  - The Board of Directors will determine the date of the meeting each year.
14. **Optional Provisions:** Check any of the following provisions which should be included in the Corporation's governing documents.
- Only Shareholders can be elected as members of the board of directors.
  - Currently existing Shareholders should have the first (preemptive) right to acquire any new shares which the Corporation proposes to issue after the initial formation of the Corporation
  - Shareholders should be allowed to cumulate votes for directors. Cumulative voting means that each shareholder has as many votes per share as there are directors, and the shareholder can choose to allocate all of these votes in any manner that the shareholder chooses, including by using all of the votes on one director.
  - If action is taken by the Shareholders by written consent instead of at a meeting of the Shareholders, the written consent should need only the number of shareholder votes as would be required to take that action at a meeting at which all of the Shareholders are present (the statutory default requires unanimous vote to have an effective written consent, regardless of the normal voting rules for meetings)
  - The Shareholder vote required for fundamental business transactions and actions such as a sale of the business, a merger, a conversion, amending the certificate of formation of the Corporation should only require a majority vote of the Shareholders (the statutory default requires the vote of 2/3 of the Shareholders for these matters).
  - The power to amend the Corporation's Bylaws should be reserved to the Shareholders (and not shared with the Board of Directors).
  - Directors should enjoy limited liability for their actions on behalf of the Corporation.
  - If the Directors are sued for actions taken on behalf of the Corporation, the Corporation should pay for or reimburse the director for the costs incurred by the director in connection with the lawsuit.
  - The Corporation should be allowed to enter into transactions with interested directors, officers, or shareholders (e.g. the Corporation should be allowed to lease property owned by a director of the Corporation).

15. **Tax Matters Shareholder:** Fill in the full legal name and social security number of the Shareholder who will be responsible for communicating with the IRS regarding tax matters affecting the Corporation.

<b>Name:</b>	<b>Social Security Number:</b>

16. **Employees of the Corporation:** Fill in the following information with respect to employees that the Corporation expects to hire in the 12 month period beginning at the Corporation's formation.

Highest number of Agricultural employees expected in the next 12 months: \_\_\_\_\_  
 Highest number of Household employees expected in the next 12 months: \_\_\_\_\_  
 Highest number of Other employees expected in the next 12 months: \_\_\_\_\_  
 Do you expect to pay \$4,000 or less in wages in the next calendar year?  Yes  No

17. **Buy-Sell Provisions:** The shares of the Corporation will be governed by a buy-sell agreement which contains provisions that allows the Corporation to restrict who can become a Shareholder of the Corporation. This permits the Shareholders to have some assurance that they can remain in business with only those persons that they originally chose to enter into a business relationship with. If a third party obtains shares of the Corporation (e.g. a Shareholder has died and the Shareholders heirs have inherited shares or a Shareholder's creditors have seized shares), in most instances this event will result in the Corporation and/or the other Shareholders having an opportunity to purchase the shares which the third party has acquired. The Corporation's board of directors will determine the fair market value of the shares at each annual meeting, and the determined price will be the purchase price paid for any shares until the next determination of the purchase price. Answer the following questions related to the terms of the buy-sell provisions.

Initial Value of Shares: What should be the initial fair market value of the shares of Common Stock (this will likely be the total value of property contributed to the Corporation, including the purchase price of the shares)? \$ \_\_\_\_\_

If a Shareholder has died:

- How much of the purchase price should be paid at the time the deceased Shareholder's shares are purchased? \_\_\_\_\_%
- Over how long of a period should the remaining portion of the purchase price be paid (e.g. 5 years?) \_\_\_\_\_
- Should payments of amounts owed be made:  Monthly  Annually

Other Purchase Events: (e.g. creditor seizure of shares)

- How much of the purchase price should be paid at the time the deceased Shareholder's shares are purchased? \_\_\_\_\_%
- Over how long of a period should the remaining portion of the purchase price be paid (e.g. 5 years?) \_\_\_\_\_
- Should payments of amounts owed be made:  Monthly  Annually

**18. Federal Income Tax Treatment** (check only one):

C-Corporation. A Corporation may elect to be treated as a C-Corporation for Federal Income Tax purposes. A Corporation taxed as a C-Corporation will directly pay taxes on any income which it earns, and is required to file an annual IRS Form 1120. Any distributions to Shareholders of the Corporation would be subject to additional tax at the Federal dividend tax rate. A Corporation that is anticipating a broad investor base may find taxation as a C-Corporation for Federal Income Tax purposes attractive, because it eliminates any phantom income potential for its investors (phantom income results when a Shareholder of a Corporation is required to pay taxes on the Corporation income, but does not receive distributions of cash from the Corporation with which to pay the tax).

S-Corporation. A Corporation may elect to be treated as a S-Corporation for Federal Income Tax purposes. A Corporation taxed as a S-Corporation is a “flow through” entity meaning that the Corporation does not pay taxes on its income. Instead, the Corporation’s income and losses “flow through” and are taxed directly to the Shareholders of the Corporation. A Corporation which is taxed as a S-Corporation for Federal Income Tax purposes is required to file an annual IRS Form 1120s informational return that informs the IRS how much income or loss the Corporation earned. The annual IRS Form 1120s must be accompanied by a Schedule K-1 completed for each of the Shareholders which lets the IRS know how much of the Corporation’s income or loss the IRS can expect to be reported by each of the Shareholders.