



## Nonprofit Corporations vs. Nonprofit Associations: a Comparison

	<b><i>Nonprofit Corporations</i></b>	<b><i>Nonprofit Unincorporated Associations</i></b>
<b><i>Formality</i></b>	Must file Certificate of Formation with Texas Secretary of State Must have a registered agent for service.	Not required to file with Secretary of State. May appoint a registered agent for service but not required.
<b><i>Formation</i></b>	Nonprofit is a corporation in which no part of income is distributable to members, directors, or officers.  <a href="#">Texas Business Organization Code</a> governs formation; sets forth requirements for the number of directors, voting rights of directors and members, meeting procedures, notice requirements, the officers and their duties.  Certificate of Formation must be filed with the Secretary of State.	Nonprofit is an association with at least three members “joined by mutual consent for a common, nonprofit purpose” and provides for two discretionary filings. <a href="#">Texas Business Organizations Code Ch. 252.</a>  Articles of Association are not required to be filed with the Secretary of State.
<b><i>Record Keeping</i></b>	Must keep “correct and complete” books and account records and minutes of all board, committee, and member proceedings and must keep a record of the names and addresses of voting members.  Information must be available to members on demand.  Nonprofit Corporations that raise more than \$10,000 a year must maintain full and correct financial records for each transaction in accordance with generally accepted accounting practices. The board must prepare an annual report of the corporation’s financial activity.	Must keep “correct and complete” account records for at least 3 years after the end of each fiscal year.  Records must be made available to members on request.  The Attorney General is authorized to inspect and make copies of these records and other documents to determine if the association has violated state law.
<b><i>Reporting Requirements</i></b>	If tax exempt, must file annual tax reports with Texas Comptroller and periodic reports with Texas Secretary of State. Financial activity reports must be filed with the IRS at the close of each fiscal year.	Same requirements.

<p><b>Liability</b></p>	<p>Legal entity of Nonprofit Corporation protects members and directors in those roles from personal claims for the corporation’s breach of contract or tortious act or omission (though they may be personally liable for actions not taken in good faith, with ordinary care and in the best interest of the nonprofit).</p> <p><u>Indemnification</u> Under the Texas Business Organization Code, a nonprofit corporation director may be indemnified for lawsuit expenses depending on the nature and outcome of the lawsuit.</p> <ul style="list-style-type: none"> <li>• <i>Must</i> indemnify a director against reasonable expenses if the director was successful in defending the lawsuit.</li> <li>• <i>May</i> indemnify a director who is not wholly successful if director acted in good faith and reasonably believed the conduct was within the best interest of the corporation.</li> <li>• <i>May</i> indemnify a director in a criminal case if director had no reason to believe his conduct was unlawful.</li> </ul> <p><u>Immunity</u> The <a href="#">Charitable Liability and Immunity Act</a> (Tex. Civ. Prac. &amp; Rem. Code §84), volunteers that serve charitable organizations are immune from civil liability under certain circumstances. A “charitable organization” is any <i>corporation</i>, foundation, community chest, or fund that is exempt from federal income tax (and listed as 501(c)(3) or (c)(4)).</p>	<p>Under the Texas Business Organization Code, members are not liable for a breach of the association’s contracts or for a tortious act or omission <i>merely</i> because the person is a member.</p> <p><u>Indemnification</u> The Texas Business Organization Code does not specifically authorize indemnification for fines, liability, attorney’s fees, etc. for a director of an association, so nonprofit associations must take affirmative steps to create and impose these rules.</p> <p><u>Immunity</u> Under the <a href="#">Charitable Liability and Immunity Act</a>, volunteers for nonprofit associations benefit from charitable immunity only if the associations</p> <ul style="list-style-type: none"> <li>• a bona fide religious, charitable, educational, etc. organization,</li> <li>• does not participate in any political campaign, and</li> <li>• <i>normally receives more than 1/3 of its annual support from private or public gifts, grants, contributions, or membership fees.</i></li> </ul>
<p><b>Tax Exempt Status</b></p>	<ul style="list-style-type: none"> <li>• Must file IRS Form 1023 application for exemption (except churches).</li> <li>• Must have an exempt purpose, an Employer Identification Number (EIN), and a Certificate of Formation from the Texas Secretary of State.. Articles of Formation must contain specific language (See <a href="#">IRS Pub. 557</a>)</li> <li>• IRS Form 1023 Application must include a copy of the Certificate, , financial data, and a description of the nonprofit’s activities.</li> <li>• Unrelated business earnings taxed at corporate income tax rates.</li> </ul>	<p>Same requirements.</p>
<p><b>Powers as a legal entity</b></p>	<p>Corporation is formed by the laws of the state; acts as a “person” to carry on business or other activities.</p> <p>Corporation has the power to sue or be sued, purchase, lease, acquire, hold, and transfer property in its own name, etc.</p>	<p>Associations have powers similar to corporations. Association can acquire, hold, and transfer an estate or interest in real or personal property, and can be the beneficiary of trusts, contracts, or wills.</p> <p>Nonprofit association may also sue or be sued.</p>

<b>Nonprofit Postage Rates</b>	Eligibility for nonprofit standard mail rates determined by US Postal Service. See <a href="#">USPS Nonprofit Mail Eligibility</a> ; Complete <a href="#">Application to Mail at Nonprofit Mail Prices</a> .  Organization must send articles of incorporation or association; and provide evidence of nonprofit status. This can be an exemption letter from the IRS or a financial statement from an independent auditor.	Same requirements.
<b>Taxes</b>	Tax exempt status is not automatic. Nonprofits must apply and receive an exemption from IRS and from the <a href="#">Texas Comptroller</a> .	Same requirements.
<b>Regulation</b>	Attorney General has authority to examine books and records and determine violation of laws.	Same authority.

Texas Community Building with Attorney Resources (CBAR)  
4920 N. IH-35, Austin TX 78751  
Tel: (512) 374-2712, Fax: (512) 447-3940  
[www.texasbar.org](http://www.texasbar.org), Email: [texasbar@trla.org](mailto:texasbar@trla.org)