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How to Terminate a Non-Profit Corporation in Texas

Termination - Generally

What is termination?

Termination is the end of a corporation's legal existence. After termination, the corporation may not continue formal operations or enter into contracts, except as necessary to wind up the corporation's affairs. Winding up is the process of wrapping up the business and affairs of the corporation due to the termination.

Voluntary termination is initiated by the corporation's board of directors or a majority of its members. The decision to terminate may result, for instance, from the loss of the organization's membership or donors, or perhaps because the function of the organization has become obsolete. Involuntary termination is initiated by actions of the government or private persons who oppose the continued operations of the nonprofit.

Why is termination so important for the nonprofit?

Without formal termination, the nonprofit continues to exist. Reporting and filing requirements, and the obligation of directors to manage the affairs of the corporation in good faith, with ordinary care and in the best interests of the corporation, continue. Most certificates of formation states that the corporation will continue to legally exist until the directors decide to terminate it. If the nonprofit does not terminate, the directors and officers may still be liable for certain types of claims against the nonprofit.

When does voluntary termination begin?

A nonprofit may terminate any time after the certification of formation have been filed with the Secretary of State. For example, circumstances may arise whereby anticipated funding does not come through for the nonprofit, and even though the organization has incorporated, the nonprofit

may want to be terminated.

May voluntary termination be revoked?

Yes. Voluntary termination may only be revoked *prior* to the issuance of the certificate of termination from the Secretary of State. The procedure for revocation is the same as for initiating termination, requiring either the resolution of voting members at a meeting called for such purpose or the resolution of the board of directors. Once the certificate of termination is issued by the secretary of state, termination cannot be revoked.

What are the legal requirements in Texas to terminate a nonprofit?

A Texas nonprofit corporation that wishes to cease its operations and be terminated should follow the procedures for winding up the business and affairs of the corporation in the manner provided in chapter 11 of the Texas Business Organizations Code (BOC). On completion of the winding up process, the nonprofit must file a certificate of termination with the secretary of state. If the non-profit does not file a certificate of termination and go through the winding up process, the directors may become liable for obligations of the nonprofit.

Procedures to Follow Prior to Filing the Certificate of Termination

1. ***Update the financial statements of the nonprofit.*** The nonprofit needs to have a clear record of its outstanding debts and liabilities.
2. ***Adopt a resolution to terminate the nonprofit.*** The manner in which the resolution is adopted depends on whether or not there are members with voting rights, or whether the management of the corporation is vested in its members.
 - a. *If there are members with voting rights, as indicated in the certificate of formation or bylaws.* The board of directors must adopt a resolution recommending that the corporation be terminated, and directing that the question of such termination be submitted to a vote at a meeting of members having voting rights.

The nonprofit can then adopt the resolution in one of the following two ways:

- i. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the idea of terminating the corporation, shall be given to each member entitled to vote at such meeting. This notice must be delivered at least 10, but no more than 60, days before the vote is to be taken. The notice can be delivered personally, by mail, or electronically. At the meeting, a quorum must be present, and at least two-thirds of the votes of members present, or represented by proxy (unless proxy is prohibited), must approve the resolution.
- ii. The resolution may also be adopted by written consent. Pursuant to BOC § 6.201, written consent requires a statement setting forth the action to be taken and requires the signature of all members entitled to vote, unless the certificate of

formation specify that something less than unanimity is sufficient. Each written consent shall include the date of the signature of the member.

Note: Churches may provide notice by oral announcement at any regularly scheduled worship service held before the vote is taken, unless the church's certificate of formation or bylaws prescribe another notice requirement.

- b. *If there are no members, or no members with voting rights*, the termination of the corporation should be authorized at a meeting of the board of directors, upon the adoption of a resolution to terminate by the vote of a majority of the directors in office.
- c. *If the certificate of formation vest management of the affairs of the corporation in its members*. The board of directors must first adopt its resolution that recommends termination. The resolution shall be submitted to a vote at an annual, regular, or special members' meeting. Unless otherwise provided in the certificate of formation or bylaws, notice stating that the purpose or one of the purposes of the meeting is to consider termination must be given. The resolution's adoption requires a two-thirds vote of the members present at the meeting. This notice must be delivered at least 10, but no more than 60, days before the vote is to be taken.

Once the resolution is adopted, either by members or by the board, the nonprofit must cease the conduct of its affairs, except as necessary for the winding up of the corporation.

d. Sample Resolution:

WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF ABC CORPORATION RECOMMENDING
TERMINATION OF CORPORATION

[Date of Resolution]

After due deliberation, the Board of Directors of ABC Corporation, a Texas non-profit corporation, has determined that termination of the corporation would be in the best interests of the corporation and its shareholders. Accordingly, the following resolution has been approved by the Board:

RESOLVED:

- 1. The Board of Directors recommends that the corporation be terminated.
- 2. The question of termination will be submitted to the members for their approval at a meeting to be duly noticed. *[if necessary]*
- 3. The members' meeting will be a _____ [regular, annual meeting *or* a specially called meeting] and will be held at _____ [address], on _____ [date], at _____ [time].

Notice will be given accordingly.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors of ABC Corporation have signed their names to this Written Consent as of the date first given above.

Board of Directors:

[Signature]

[Typed Name]

- 3. Send notice of the proposed termination to known creditors and claimants against the nonprofit.** By law, the nonprofit must immediately send notice of the proposed termination to creditors after adopting the resolution. The notice must be sent by registered or certified mail, return receipt requested, and addressed to the last known address of the person presenting the claim. If the nonprofit changes its mind about terminating, a new corporate resolution is necessary to reverse the action.

a. **Sample Notice:**

NOTIFICATION OF RIGHT TO PRESENT CLAIM AGAINST “ABC Corporation”
[Date of Notice]

ABC Corporation has _____ [terminated *or* elected to terminate]. You _____ [may have *or* are asserting] a claim against the terminated corporation. In order to preserve your claim you must:

1. Present the claim in writing to the terminated corporation on or before _____ [date must not be earlier than 120 days after the date of this notice].
2. Describe the claim in sufficient detail to reasonably inform the corporation of your identity and of the amount and nature of your claim. You must make this description as part of the written presentation of your claim.
3. Mail the claim to the terminated corporation at the following address:

_____ [mailing address].

IF A WRITTEN PRESENTATION OF YOUR CLAIM IS NOT RECEIVED AT THE ADDRESS GIVEN ABOVE ON OR BEFORE _____ [date], YOUR CLAIM WILL BE EXTINGUISHED.

The claims procedure set out in this notice is the procedure required by Texas Business Organizations Code § 11.358. A copy of the statutory provision is included with this notice.

ABC Corporation

By _____ [signature]
_____ [typed name], _____ [title of officer]

[Attach copy of Texas Business Organizations Code § 11.358]

- 4. Pay or make provisions for all debts and liabilities.** If the nonprofit’s property and assets are sufficient to satisfy the debts and liabilities, then the nonprofit must pay those obligations. If the certificate of termination is filed before these obligations are paid, then provisions must be made for payment and indicated in the filing.

If the nonprofit’s property and assets are not sufficient to discharge the debts and liabilities, then the property and assets should be applied to the nonprofit’s debts and obligations

proportionally.

Note that, if there are not sufficient funds to pay all creditors, the corporation should not show any preferential treatment to any of the creditors of a particular class (such as secured or unsecured). Decisions to prefer one creditor over another could lead to breach of fiduciary duty claims against the directors. However, the organization should repay taxes owed to government agencies before other debts.

Unless otherwise provided for by the certificate of formation, any remaining assets should be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code or described in Section 170(c)(1) or (2) of the Internal Revenue Code.

If assets held by the corporation require return, transfer, or conveyance, upon termination, such assets shall be returned, transferred, or conveyed in accordance with such requirements upon termination.

5. ***Adopt a plan of distribution of assets.*** After adopting the resolution to terminate, the law requires that the nonprofit begin to collect its assets and apply and distribute them. To do so, a plan of distribution may, and in some cases must, be adopted.
 - a. A plan of distribution must be adopted when the nonprofit has assets to be transferred or conveyed. To adopt a plan of distribution, follow the same steps as detailed in adopting the resolution to terminate, outlined in B-2-(a),(b), or (c) above.
 - b. ***Sample Plan of Distribution:***

**PLAN OF TERMINATION
OF
ABC CORPORATION**

This Plan of Termination (the “Plan”) is intended to accomplish the complete liquidation of ABC Corporation, a Texas non-profit corporation (the “Corporation”).

1. **Adoption of Plan.** This Plan shall become effective as of the first date and time that this Plan and a written consent providing for the voluntary termination of the Corporation pursuant to the Texas Business Organizations Code, as amended (the “Code”), are adopted by the [directors *or* members] of the Corporation (the “Effective Date”).
2. **Notice to Claimants.** As promptly as practicable after the Effective Date, the Corporation shall cause written notice of its intention to terminate to be sent by registered or certified mail to each known claimant against the Corporation, if any.
3. **Sale of Assets.** As promptly as practicable after the Effective Date, the Corporation shall sell or otherwise liquidate all of its remaining assets. The officers of the Corporation are expressly authorized to take into account the market conditions that may exist from time to time in determining when the sale or other liquidation of assets of the Corporation is practicable.

4. Payment of Obligations. As promptly as practicable after the Effective Date, the Corporation shall pay or make adequate provision for the payment of all known debts, obligations or liabilities of the Corporation.
5. Distribution of Assets. There being no conditions requiring return, transfer or conveyance upon termination, as promptly as practicable after the payment of all known debts, obligations, or liabilities of the Corporation (or the provision for such payment is made), the remaining assets of the Corporation, if any, shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1986, or its successor statute, as designated by the Board of Directors of the Corporation, or otherwise in accordance with the TBOC.
6. Termination. As promptly as practicable after the Effective Date, Certificate of Termination of the Corporation and related required documents, if any, shall be filed with the Secretary of State of Texas in accordance with the TBOC.
7. Termination of Business. From and after the Effective Date, the Corporation shall not engage in any business activity, except for operations and activities related to maintaining and preserving its assets pending the distribution of its assets to its shareholders, the termination and winding-up of its affairs in an orderly manner, and its withdrawal from the states or other jurisdictions, if any, in which it is qualified to transact business, all in accordance with this Plan and applicable law.
8. Power of Officers. The officers of the Corporation, or any of them, shall do all acts and things provided for in this Plan and any and all other acts and things that they, or any of them, may deem necessary or advisable to effectuate the liquidation and termination of the Corporation and to carry out fully this Plan in accordance with the laws of the State of Texas.

Filing the Certificate of Termination

1. A sample certificate of termination, Secretary of State Form 652, is available at http://www.sos.state.tx.us/corp/forms/652_boc.pdf.
2. The minimum requirements are as follows:
 - a. The nonprofit corporation's name;
 - b. The name and address of each of the nonprofit corporation's governing persons;
 - c. The nonprofit corporation's file number assigned by the secretary of state;
 - d. The nature of the event requiring winding up;
 - e. A statement that the nonprofit corporation has complied with the provisions of the Business Organizations Code governing its winding up;
 - f. A statement that any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed;
 - g. A statement that there is no suit pending against the nonprofit corporation or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the nonprofit corporation in a pending suit; and
 - h. Should be signed by an officer of the corporation.
3. The original and one copy of the form with the filing fee should be sent to the Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, TX, 78711-3697. If the copies are being delivered in person, the delivery address is James Earl Rudder Office Building, 1019 Brazos, Austin, TX, 78701. One document will be placed on record and, if a duplicate copy was provided, the second file-stamped copy will be returned. If a document is

transmitted by fax, credit card information must accompany the transmission.

4. The filing fee is \$5.00. A check or money order should be made payable to the Secretary of State. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.
5. Obtain certificate of termination from Secretary of State, and keep with corporate records.

After Filing the Certificate of Termination- the “Winding Up” Process

1. ***The role of the directors and officers.*** Although terminated, the nonprofit may still act, through its officers and directors, to the extent necessary to wind up the affairs and operations of the nonprofit. During this time, the directors may vote on matters related to this process, and officers may take appropriate actions on behalf of the corporation. For this reason, directors and officers should generally be encouraged to stay in office, even after termination. However, once the bulk of the issues are taken care of, it does make sense for the directors and officers to formally resign, leaving the final tasks such as filing of tax returns to one or two appointed individuals.

Note that is not necessary to wait until the nonprofit is formally terminated to begin the winding up process. If some of the activities are initiated even while the certificate of termination is being filed, then there is less winding up to take care of, and directors can more quickly move on to other commitments.

2. ***The acts permitted during winding up include:***

- a. Collection of all of the corporation’s assets.
- b. Disposing of assets, including the sale of assets for the purpose of converting them to cash to pay creditors.
- c. Discharging or making provision for the payment of all outstanding debts and liabilities.
- d. Distributing available assets in accordance with the certificate of formation, bylaws or the TBOC.

3. ***Tax and regulatory filings.***

- a. ***Tax filings.*** The nonprofit needs to make arrangements to pay outstanding taxes or penalties on unpaid taxes and to file any final tax returns, including income tax and sales tax returns.
 - i. ***Form 990.*** File a final Form 990 with the IRS by the 15th day of the 5th month after the end of the period for which a return is due. You will also need to file a Schedule N regarding the disposition of assets as well as a certified copy of the certificate and plan of termination. See also IRS Publication 4779.

Check the final return box on the IRS Form 990.

- b. ***Licenses and permits.*** The nonprofit should compile a list of all license and permits held by the organization. For instance, the nonprofit may have a bulk mail permit or a sales-tax exemption, or may be a registered employer with the Employment Security Commission. The nonprofit then needs to evaluate which licenses and permits can be allowed to simply ‘lapse’ and which ones require notification to the regulatory authority.
4. ***Terminating contracts, including employee contracts.*** The nonprofit should determine which contracts can and should be terminated.
 - a. ***Leases and bank accounts.*** Contracts that may need to be terminated include leases and certain service providers, like banks. If the lease arrangements cannot be dismissed to the satisfaction of the landlord, then such contract will need to be treated alongside other creditors and claimants.
 - b. ***Employees.*** The nonprofit should determine what legal obligations it has to employees, like notice requirements under COBRA. The nonprofit should also file Form C-13 with the Texas Workforce Commission to notify the agency of the change in operations. The form is available at: <http://www.twc.state.tx.us/changes-status-your-business#closedYourBusinessOrNoLongerHaveEmployees>
5. ***Document retention.*** Any records that may need to be referenced in the future should be stored in a relatively accessible location.
6. ***Continue “corporate existence” for 3 years from the date of termination.*** A nonprofit can still be sued following termination for a period of three years. Continued existence permits the survival of any remedy not barred by the statute of limitations against the nonprofit.

Potential Director Liability in the Termination Process

1. Officers and directors are legally required to conduct their duties in good faith, with ordinary care, and in a manner reasonably believed to be in the best interest of the corporation. These same standards of conduct should be observed by officers and directors when terminating the corporation. Failure to do so could result in liability for officers and directors.
2. The authority of the officers and directors remains intact during the winding up process. Therefore, officers and directors should be diligent in conducting all termination activities. Special attention should be given to creating a sound plan of termination and fair distribution of assets to creditors. It should be noted that the primary potential for officer and director liability in the termination process is the failure to pay off creditors when funds exist to do so.
3. ***Sample Certificate of Termination***

**CERTIFICATE OF TERMINATION FOR _____,
A TEXAS NON-PROFIT CORPORATION**

- (1) The name of the corporation is _____.
- (2) The file number issued to the entity by the secretary of state is _____.
- (3) The names and addresses of each of the corporation's governing persons are:

Governing Person 1:

First Name	M.I.	Last Name
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Address:

Street or Mailing Address	City	State	County	Zip Code
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Governing Person 2:

First Name	M.I.	Last Name
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Address:

Street or Mailing Address	City	State	County	Zip Code
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Governing Person 3:

First Name	M.I.	Last Name
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Address:

Street or Mailing Address	City	State	County	Zip Code
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Governing Person 4:

First Name	M.I.	Last Name
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Address:

Street or Mailing Address	City	State	County	Zip Code
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- (4) The nature of the event requiring winding up is set forth below: (Select either A, B, C, D, or E.)
- A. A voluntary decision to wind up the entity has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.
 - B. The period of duration specified in the governing documents of the entity has expired.
 - C. The occurrence of an event specified in the governing documents of the entity that requires the winding up, dissolution, or termination of the entity.

- D. The occurrence of an event specified in the Texas Business Organizations Code that requires the winding up, dissolution, or termination of the entity **OR**
 - E. A court decree requiring the winding up, dissolution, or termination of the entity has been rendered under the provisions of the Texas Business Organizations Code or other law.
- (5) The filing entity has complied with the provisions of the Texas Business Organizations Code governing its winding up.
- (6) Effectiveness of Filing (Select either A, B, or C.)
- A. This document becomes effective when the document is filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- OR**
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

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- (7) The undersigned authorized person acting on behalf of the named nonprofit corporation certifies that:
1. Any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed in accordance with chapter 11 and chapter 22 of the Texas Business Organizations Code.
 2. There is no suit pending against the nonprofit corporation or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against the nonprofit corporation in a pending suit.
 3. If the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, that the distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with the BOC for the distribution of that property.
- (8) The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Signed: _____
An Authorized Officer

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