

### Appointment of Agent to Receive Service of Process

If desired, the association may also appoint a person to receive service of process on its behalf. The statement must comply with section 252.011 and subchapter E of chapter 5 of the BOC and be filed with the secretary of state. A person designated as the agent for service of process must have consented, either in a written or electronic form, to serve as the designated agent of the entity. A person who is designated as an agent for service of process must sign the statement of appointment to evidence acceptance of the appointment.

This filing is not the equivalent of filing a certificate of formation with the secretary of state; it is a method for a nonprofit association to facilitate service of process and to ensure that the association receives notice of any lawsuit brought against the association. The secretary of state has promulgated a form that may be used for this purpose (Form 706 (Word, Acrobat)). The filing fee is \$25.

The BOC also provides for the resignation of an appointed agent, and an amendment or cancellation of the statement of appointment to be filed with the secretary of state.

### Taxes

Nonprofit associations are subject to a state franchise tax and federal income taxes unless an exemption from those taxes is granted. For franchise tax information visit the web site of the Comptroller of Public Accounts at <http://www.window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://www.window.state.tx.us/taxinfo/exempt/index.html> or call (800) 252-5555. For information relating to federal income tax filing requirements, exemptions, federal employer identification numbers, tax publications and forms call (877) 829-5500 or visit the Internal Revenue Service (IRS) web site at [www.irs.gov](http://www.irs.gov).

Revised 12/10



## Information on Unincorporated Nonprofit Associations Under the Texas Business Organizations Code

*This information is not a substitute for the advice and services of an attorney and tax specialist.*

Texas law concerning unincorporated nonprofit associations is codified as chapter 252 of the Texas Business Organizations Code (BOC). Chapters 1 and 4 and, if a nonprofit association designates an agent for service of process, subchapter E of chapter 5 of the BOC, also apply to a nonprofit association.

A “nonprofit association” is defined as an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. A form of joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, regardless of whether the co-owners share use of the property for the nonprofit purpose (BOC § 252.001(2)). Under Chapter 252, an unincorporated nonprofit association is treated for certain issues as a separate legal entity as opposed to an aggregate of individuals.

Chapter 252 applies to all unincorporated nonprofit associations regardless of whether the entities are tax exempt under the provisions of state or federal law.

Chapter 252 sets forth the authority of the association, in its own name to acquire, hold, encumber or transfer an estate or interest in real or personal property (BOC §§ 252.003 and 252.004) and to sue and be sued (BOC § 252.007); and the liability of the association and its members in tort and contract (BOC § 252.006). Section 252.010 of the BOC requires nonprofit associations to maintain correct and complete books and records of account and make those records available to its members. Under this section, the attorney general is given the authority to examine those books and records and investigate the association to determine if a violation of any law of this state has occurred.

Two discretionary filings may be made by nonprofit associations under Chapter 252: a statement of authority as to real property (BOC § 252.005) and an appointment of an agent authorized to receive service of process on behalf of the association (BOC § 252.011).

### Statement of Authority as to Real Property

If desired, the association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association. The statement must comply with section 252.005(c) and (d) and be recorded in the county clerk’s office in the county in which a transfer of the real property would be recorded. The county clerk may collect a fee for recording the statement of authority in the amount authorized for recording a real estate transfer. After recording, the statement of authority may be amended or canceled. Unless canceled earlier, the statement expires on the fifth anniversary of the date of the recording of the original statement or any amendment to that statement.