

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS AND PURPOSE

Revised Law:

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- (3) eliminating repealed, duplicative, expired, executed, and other ineffective provisions; and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

Source Law:

New

Revisor's Note:

This section of the revised law represents standard introductory language for new Texas codes.

Revised Law:

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.

Source Law:

TBCA 13.02(A)(1)

(1) "Affiliate" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a specified person.

Revisor's Note:

The revised law adopts the definition of "affiliate" from the Federal Securities Act of 1933, as amended. The definition is substantively the same as in the source law, which was also derived from the same federal law.

Revised Law:

- (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 securities of the entity or organization;

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

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

(D) a governing person or an affiliate or officer of the person.

Source Law:

TBCA 1.02.A(2)

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

(a) a domestic or foreign corporation or other entity of which the person is an officer or partner or is the beneficial owner of 10 percent or more of a class of voting shares or similar securities of that corporation or other entity;

(b) a trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; or

(c) a spouse of the person or a relative of the person, or of the person's spouse, who has the same home as the person or who is a director or officer of such person or any of its affiliates.

Revisor's Note:

No substantive change is intended. Clause (A)(ii) has been reformed to eliminate the use of the phrase "beneficial owner," which may be confused with the defined term "owner."

Revised Law:

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

Source Law:

New

Revisor's Note:

The revised law uses this new term in Title 1 to denote those entities governed as an association under Title 6 or 7.

Revised Law:

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

Source Law:

New

Revisor's Note:

The term "assumed name" is introduced in the revised law for clarification and as a means to cross-reference to Chapter 36, Business & Commerce Code.

Revised Law:

(5) "Business" means a trade, occupation, profession, or other commercial activity.

Source Law:

TRPA 1.01(1)

(1) "Business" means a trade, occupation, profession, or other commercial activity.

Revisor's Note:

No substantive change is intended.

Revised Law:

(6) "Certificate of formation" means:

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

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

Source Law:

New

Revisor's Note:

Under the revised law, a "filing entity" is formed by filing a "certificate of formation", which replaces the existing articles of incorporation, articles of organization, certificate of limited partnership or similar document under the source law.

Revised Law:

(7) "Certificated ownership interest" means an ownership interest of a domestic entity represented by a certificate issued in bearer or registered form.

Source Law:

TBCA 1.02.A(5)

(5) "Certificated shares" means shares represented by instruments in bearer or registered form.

Revisor's Note:

The term "certificated ownership interest" is introduced in the revised law to make generally applicable to for-profit domestic entities the certificated share provisions found in Subchapter E of Chapter 3. The use of the term "certificated" in connection with particular types of ownership interests throughout the Code should have a similar meaning.

Revised Law:

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

Source Law:

TBCA 12.02.A(1)

(1) "Close corporation" means a domestic corporation formed in conformance with the requirements of this part.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

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

(B) that the person intends to be a loan to the entity.

Source Law:

TLLCA 5.01

Art. 5.01. A. The contribution of a member may consist of any tangible or intangible benefit to the limited liability company or other property of any kind or nature, including cash, a promissory note, services performed, a contract for services to be performed, or other interests in or securities or other obligations of any other limited liability company, domestic or foreign, or other entity.

TRLPA 1.02(2)

(2) "Contribution" means the cash, property, services rendered, or promissory note or other obligation of a person to pay cash or transfer property to the limited partnership that a person contributes to a limited partnership in the person's capacity as a partner, but does not include cash or property received by the partnership with respect to a promissory note or other obligation to the extent that the agreed value of the note or obligation has previously been included as a contribution.

Revisor's Note:

No substantive change is intended.

Revised Law:

(10) "Conversion" means:

- (A) the continuance of a domestic entity as a foreign entity of any type;
- (B) the continuance of a foreign entity as a domestic entity of any type; or
- (C) the continuance of a domestic entity of one type as a domestic entity of another type.

Source Law:

TBCA 1.02.A(8)

(8) "Conversion" means:

(a) the continuance of a domestic corporation as, and in the organizational form of, a foreign corporation or other entity; or

(b) the continuance of a foreign corporation or other entity as, and in the organizational form of, a domestic corporation.

TLLCA 1.02.A(11)

(11) "Conversion" means:

(a) the continuance of a domestic limited liability company as, and in the organizational form of, a foreign limited liability company or other entity; or

(b) the continuance of a foreign limited liability company or other entity as, and in the organizational form of, a domestic limited liability company.

TRLPA 2.15(h)(1)

(1) "Conversion" means the continuance of:

(A) a domestic limited partnership as, and in the organizational form of, a foreign limited partnership or other entity; or

(B) a foreign limited partnership or other entity as, and in the organizational form of, a domestic limited partnership.

TRPA 9.05(i)(1)

(1) "Conversion" means:

(A) the continuance of a domestic partnership as, and in the organizational form of, a foreign partnership or other entity; or

(B) the continuance of a foreign partnership or other entity as, and in the organizational form of, a domestic partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

(11) "Converted entity" means an entity resulting from a conversion.

Source Law:

TBCA 1.02.A(9)

(9) "Converted entity" means any domestic or foreign corporation or other entity to which a converting entity has converted or intends to convert as permitted by Article 5.17 of this Act.

TLLCA 1.02.A(12)

(12) "Converted entity" means any domestic or foreign limited liability company or other entity to which a converting entity has converted or intends to convert as permitted by Article 10.08 of this Act.

TRLPA 2.15(h)(2)

(2) "Converted entity" means any domestic or foreign limited partnership or other entity to which a converting entity has converted or intends to convert as permitted by this section.

TRPA 9.05(i)(2)

(2) "Converted entity" means any domestic or foreign partnership or other entity to which a converting entity has converted or intends to convert as permitted by this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

(12) "Converting entity" means an entity as the entity existed before the entity's conversion.

Source Law:

TBCA 1.02.A(10)

(10) "Converting entity" means any domestic or foreign corporation or other entity that has converted or intends to convert as permitted by Article 5.17 of this Act.

TLLCA 1.02.A(13)

(13) "Converting entity" means any domestic or foreign limited liability company or other entity that has converted or intends to convert as permitted by Article 10.08 of this Act.

TRLPA 2.15(h)(2)

(3) "Converting entity" means any domestic or foreign limited partnership or other entity that has converted or intends to convert as permitted by this section.

TRPA 9.05(i)(3)

(3) "Converting entity" means any domestic or foreign partnership or other entity that has converted or intends to convert as permitted by this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

Source Law:

New

Revisor's Note:

No substantive change is intended. The revised law uses this term in Title 1 to denote entities governed by Chapter 251.

Revised Law:

(14) "Corporation" means an entity governed as a corporation under Title 2 or 7. The term includes a for-profit corporation, nonprofit corporation, and professional corporation.

Source Law:

TBCA 1.02.A(11)

(11) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

TNPCA 1.02.A(1)

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

Revisor's Note:

No substantive change is intended. The revised law uses this term in Title 1 to denote entities governed as a corporation under Title 2 or 7.

Revised Law:

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

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

(B) a comparable order under a:

(i) successor statute of general applicability; or

(ii) federal or state law governing insolvency.

Source Law:

TRPA 1.01(4)

(4) "Debtor in bankruptcy" means a person who is the subject of:

(A) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

Revisor's Note:

No substantive change is intended.

Revised Law:

(16) "Director" means an individual who serves on the board of directors of a foreign or domestic corporation.

Source Law:

TNPCA 1.02.A(14)

(14) "Director" means a member of the board of directors of a corporation organized under this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

(17) "Domestic" means, with respect to an entity, that the entity is formed under this code or the entity's internal affairs are governed by this code.

Source Law:

TBCA 1.02.A(11)

(11) . . . "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

TRPA 9.05(i)(4)

(4) "Domestic partnership" means a partnership the internal affairs of which are governed by this Act.

Revisor's Note:

No substantive change is intended. If an entity is formed under the Code, Sections 1.101 and 1.103 of the Code provide that its internal affairs will be governed by the Code.

Revised Law:

(18) "Domestic entity" means an organization formed under or the internal affairs of which are governed by this code.

Source Law:

TBCA 1.02.A(11)

(11) . . . "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

TRPA 9.05(i)(4)

(4) "Domestic partnership" means a partnership the internal affairs of which are governed by this Act.

Revisor's Note:

This key term is introduced into the revised law to denote those types of entities that are formed under or the internal affairs of which are governed by the Code. It is derived from

the same terms from which the definition of "domestic" is derived.

Revised Law:

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

Source Law:

New

Revisor's Note:

Not all domestic entities provide to their owners the rights of dissent and appraisal in connection with a fundamental business transaction. An entity that provides to its owners such rights is referred to in the revised law as a "domestic entity subject to dissenter's rights". Those entities that provide rights of dissent and appraisal are identified in the specific Titles governing the entities and in Subchapter H, Chapter 10.

Revised Law:

(20) "Effective date of this code" means January 1, 2004. The applicability of this code is governed by Title 8.

Source Law:

New

Revisor's Note:

This new term is used in Title 8 of the revised law setting forth transition and miscellaneous provisions.

Revised Law:

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

Source Law:

New

Revisor's Note:

In the revised law, one subset of an "organization" is an "entity," which is defined to be either a "domestic entity" or a "foreign entity." This new definition permits simplifications in Title 1.

Revised Law:

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

Source Law:

New

Revisor's Note:

In the revised law, the universe of "domestic entities" is further divided into "filing entities" and "nonfiling entities." A "filing entity" includes a domestic corporation, limited partnership, limited liability company, professional association, professional corporation, cooperative, or real estate investment trust. These entities require a filing with the Secretary of State or a county clerk's office as a condition to formation.

Revised Law:

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

Source Law:

New

Revisor's Note:

The revised law introduces a new term that covers generically all types of documents, instruments or statements that are filed with a filing officer under the Code. This new term simplifies the revised law.

Revised Law:

(24) "Filing officer" means:

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

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

Source Law:

New

Revisor's Note:

The revised law introduces a new generic term to denote the office where filing instruments are filed for different types of entities. This new term simplifies the revised law.

Revised Law:

(25) "For-profit corporation" means a corporation governed as a for-profit corporation under Chapter 21.

Source Law:

TMCLA 1302-1.03.A

A. All corporations shall, to the extent not inconsistent with any special statute pertaining to a particular corporation, be governed

(1) by the Texas Business Corporation Act, as amended, if organized for profit, and

(2) by the Texas Non-Profit Corporation Act, as amended, if organized not for profit.

Revisor's Note:

This term is defined negatively by reference to nonprofit corporations and intended to parallel the source law provisions in the TMCLA.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term is defined negatively by reference to nonprofit entities. The universe of "entities" is divided into "for-profit entities" and "nonprofit entities." This new definition permits simplifications in Title 1 of the Code.

Revised Law:

(27) "Foreign" means, with respect to an entity, that the entity is formed under, and the entity's internal affairs are governed by, the laws of a jurisdiction other than this state.

Source Law:

TBCA 1.02.A(14)

(14) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State.

TNPCA 1.02.A(2)

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this State.

TRPA 9.05(i)(4)

(5) "Foreign partnership" means a partnership, other than a limited partnership, the internal affairs of which are governed by the law of another state comparable to this Act or the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes).

Revisor's Note:

No substantive change is intended. If an entity is formed under the laws of another jurisdiction, Sections 1.102 and 1.103 of the Code provide that its internal affairs will be governed by those laws and not the laws of Texas.

Revised Law:

(28) "Foreign entity" means an organization formed under, and the internal affairs of which are governed by, the laws of a jurisdiction other than this state.

Source Law:

TBCA 1.02.A(14)

(14) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State.

TNPCA 1.02.A(2)

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this State.

Revisor's Note:

This key term is introduced into the revised law to denote those types of organizations that are formed under or the internal affairs of which are governed by the laws of a jurisdiction other than Texas. It is derived from the same terms from which the definition of "foreign" is derived.

Revised Law:

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

Source Law:

New

Revisor's Note:

A "foreign filing entity" is a foreign entity that is required to register under the Code to transact business in Texas.

Revised Law:

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

Source Law:

New

Revisor's Note:

The revised law introduces this new generic term to refer to all types of foreign governmental officials, agencies or instrumentalities. This new term simplifies the revised law.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term is defined negatively by reference to foreign filing entities. The universe of "foreign entities" is divided into "foreign filing entities" and "foreign nonfiling entities." This new definition permits simplifications in Title 1 of the Code.

Revised Law:

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

Source Law:

New

Revisor's Note:

The term "fundamental business transaction" is new and means a merger, interest exchange, conversion, or sale of all or substantially all of an entity's assets. This definition is somewhat similar to the definition of "business combination" contained in TBCA Art. 13.02.A(4).

Revised Law:

(33) "General partner" means:

(A) each partner in a general partnership; or

(B) a person who is admitted to a limited partnership as a general partner in accordance with the governing documents of the limited partnership.

Source Law:

TRLPA 1.02(4)

(4) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement.

Revisor's Note:

No substantive change is intended. New clause (A) is added to the revised law to make clear that partners in general partnerships are all general partners. This was implicit in the TRPA.

Revised Law:

(34) "General partnership" means a partnership governed as a general partnership under Chapter 152. The term includes a limited liability partnership.

Source Law:

TRPA 1.01(11)

(11) "Partnership" means an entity created as described by Section 2.02(a). The term includes a registered limited liability partnership formed under Section 3.08 or under the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments.

Revisor's Note:

No substantive change is intended. The addition of the word "general" to this term is needed in Title 1 of the revised law to distinguish this kind of partnership from a limited partnership governed under Title 4.

Revised Law:

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

(A) the board of directors of a corporation or other persons authorized to perform the functions of the board of directors of a corporation,

(B) the general partners of a general partnership or limited partnership,

(C) the managers of a limited liability company that is managed by managers,

(D) the members of a limited liability company that is managed by members who are entitled to manage the company,

(E) the board of directors of a cooperative association, and

(F) the trust managers of a real estate investment trust.

The term does not include an officer who is acting in the capacity of an officer.

Source Law:

New

Revisor's Note:

This new generic term permits simplifications in Title 1 of the revised law and encompasses the person or group of persons who are entitled to manage and direct the affairs of an entity under the revised law and the governing documents of the entity.

Revised Law:

(36) "Governing documents" means:

(A) in the case of a domestic entity:

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

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

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

Source Law:

New

Revisor's Note:

This new generic term permits simplifications in Title 1 of the revised law and encompasses the certificate of formation and the other documents or agreements adopted by the entity to govern the formation or internal affairs of the entity. Similarly, for a foreign entity, the instruments, documents and agreements that govern its formation or internal affairs constitute its "governing documents." For a corporation, the term means the certificate of formation, bylaws and, if the corporation is managed by shareholders, the shareholders agreement. For a general partnership, the term means the partnership agreement. For a limited partnership, the term means the certificate of formation and the limited partnership agreement. For a limited liability company, the term means the certificate of formation and the company agreement.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new generic term in the revised law encompasses all of the different types of persons who serve as part of the "governing authority." See the Revisor's Note above under "governing authority."

Revised Law:

(38) "Individual" means a natural person.

Source Law:

New

Revisor's Note:

This new definition clarifies the meaning of this term when used in the Code.

Revised Law:

(39) "Insolvency" means the inability of a person to pay the person's debts as they become due in the usual course of business or affairs.

Source Law:

TBCA 1.02.A(16)

(16) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its business.

TNPCA 1.02.A(12)

(12) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term is simply the adjective form of the noun "insolvency," and is defined in the same manner.

Revised Law:

(41) "Interest exchange" means the acquisition of an ownership or membership interest in a domestic entity as provided by Subchapter B, Chapter 10. The term does not include a merger or conversion.

Source Law:

New

Revisor's Note:

This new term in the revised law refers to a specific type of fundamental business transaction. The term "interest exchange" is similar to the term "share exchange" as used in the TBCA but applies to exchanges of membership or ownership interests in all domestic entities.

Revised Law:

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

Source Law:

New

Revisor's Note:

No substantive change is intended. This new definition clarifies the meaning of this term when used in the revised law.

Revised Law:

(43) "Jurisdiction of formation" means:

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

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

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

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

(ii) if Subparagraph (i) does not apply, the jurisdiction in which the entity has its chief executive office.

Source Law:

TBCA 8.02.A

A. . . . provided, however, that only the laws of the jurisdiction of incorporation of a foreign corporation shall govern

TLLCA 7.02.A

A. . . . provided, however, that only the laws of the jurisdiction of organization of a foreign limited liability company shall govern

TNPCA 8.02

A. . . . provided, however, that the laws of the jurisdiction of incorporation of a foreign corporation shall govern

TRLPA 9.01(a)

(a) The laws of the state under which a foreign limited partnership is formed govern its organization and internal affairs and the liability of its partners.

TRPA 1.05(a)

(a) Internal Affairs. The determination whether a partnership has been formed, a partnership's internal affairs, and the relations of the partners to one another are governed by:

(1) the law of the state chosen by the partners to govern if that state bears a reasonable relation to the partners or to the partnership business and affairs under principles that apply to a contract among the partners other than the partnership agreement; or

(2) if the partners do not choose a governing law under Subdivision (1), the law of the state in which the partnership has its chief executive office.

TRPA 10.01(a)

(a) The laws of the state under which a foreign limited liability partnership is formed govern its organization and internal affairs and the liability of partners for obligations of the partnership.

Revisor's Note:

This definition permits the revised law to reference in a simple manner the jurisdictional law governing an entity, domestic or foreign. The term "jurisdiction of formation" refers to the jurisdiction in which a filing entity's certificate of formation is filed. In the case of nonfiling entities, "jurisdiction of formation" means the jurisdiction chosen in the entity's governing documents to govern its

internal affairs if the jurisdiction bears a reasonable relation to the owners or members or to the nonfiling entity's affairs under contract law principles or otherwise the jurisdiction in which the entity has its chief executive office.

Revised Law:

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

Source Law:

New

Revisor's Note:

No substantive change is intended. This new definition clarifies the meaning of this term when used in the revised law.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term in the revised law permits simplifications in Title 1 and Title 7.

Revised Law:

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

Source Law:

TLICA 1.02.A(3)

(3) "Limited Liability Company" or "Company" means a limited liability company organized and existing under this chapter.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term in the revised law is added to refer to a limited partnership that is also a limited liability partnership. This type of entity is similarly named in the laws of many other states.

Revised Law:

(48) "Limited liability partnership" means a partnership governed as a limited liability partnership under Title 4.

Source Law:

TRPA 1.01(16)

(16) "Registered limited liability partnership" means a partnership registered under Section 3.08(b) and complying with Sections 3.08(c) and (d)(1).

Revisor's Note:

Existing law refers to "registered limited liability partnerships." The word "registered" is unnecessary and has been removed throughout the revised law when referring to limited liability partnerships. Removal follows the trend in the laws of other states.

Revised Law:

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

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

(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation.

Source Law:

TRLPA 1.02(5)

(5) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided by Section 3.01 of this Act or, in the case of a foreign limited partnership, in accordance with the laws of the state under which the limited partnership is organized.

Revisor's Note:

No substantive change is intended.

Revised Law:

(50) "Limited partnership" means a partnership governed as a limited partnership under Title 4. The term includes a limited liability limited partnership.

Source Law:

TRLPA 1.02(6)

(6) "Limited partnership" means a partnership formed by two or more persons under the laws of Texas and having one or more general partners and one or more limited partners.

Revisor's Note:

No substantive change is intended. The revised law uses this term in Title 1 to denote entities governed as limited partnerships under Title 4.

Revised Law:

(51) "Manager" means a person designated as a manager of a limited liability company that is not managed by members of the company.

Source Law:

TLLCA 2.12.A

A. Except and to the extent the articles of organization or the regulations shall reserve management of the limited liability company to the members in whole or in part, and subject to provisions in the articles of organization, the regulations, or this Act restricting or enlarging the powers, rights, and duties of any manager or group or class of managers, the powers of a limited liability company shall be exercised by or under the authority of, and the business and affairs of a limited liability company shall be managed under the direction of, the manager or managers of the limited liability company. If management of the limited liability company is fully reserved to the members, the limited liability company need not have managers. . . .

Revisor's Note:

The revised law uses this term in Title 1 to denote the governing persons of a limited liability company that is not managed by its members.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new generic term permits simplifications in the revised law. A "managerial official" is an officer or a governing person.

Revised Law:

(53) "Member" means:

(A) in the case of a limited liability company, a person who is a member or has been admitted as a member in the limited liability company under its governing documents;

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

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

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

(E) in the case of a professional association, a person who has membership rights in the professional association under its governing documents.

Source Law:

CAA 2(2)

(2) "Member" means a member of a nonshare or share association.

TLLCA 4.01.A

A. A limited liability company may have one or more members.
. . .

TNPCA 1.02.A(6)

(6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or its by-laws.

TUUNAA 2(1)

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

Revisor's Note:

The generic term "member" has essentially the same meaning in the revised law as the source law. The term refers to those persons who are members or have membership rights in various types of nonprofit entities and in certain types of for-profit entities. See Revisor's Note to the term "owner" below.

Revised Law:

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

Source Law:

TLLCA 4.04

A. A membership interest is personal property. A member has no interest in specific limited liability company property.

TLLCA 4.05.A

A. Unless otherwise provided by the regulations:

(1) a membership interest is assignable in whole or in part;

(2) an assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(3) an assignment entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items, and to

receive distributions, to which the assignor was entitled, to the extent those items are assigned, and, for any proper purpose, to require reasonable information or account of transactions of the limited liability company and to make reasonable inspection of the books and records of the limited liability company; and

(4) until the assignee becomes a member, the assignor member continues to be a member and to have the power to exercise any rights or powers of a member, except to the extent those rights or powers are assigned.

Revisor's Note:

The generic term "membership interest" is derived from the TLLCA where it is used extensively without explicit definition. The term, in the revised law, is extended in application to other entities who have "members." See Revisor's Note to the term "owner" below.

Revised Law:

(55) "Merger" means:

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

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

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

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

(iii) one or more surviving domestic entities or non-code organizations and the creation of one or more new domestic entities or non-code organizations.

Source Law:

TBCA 1.02.A(18)

(18) "Merger" means (a) the division of a domestic corporation into two or more new domestic corporations or into a surviving corporation and one or more new domestic or foreign corporations or other entities, or (b) the combination of one or more domestic corporations with one or more domestic or foreign corporations or other entities resulting in (i) one or more surviving domestic or foreign corporations or other entities, (ii) the creation of one or more new domestic or foreign corporations or other entities, or (iii) one or more surviving domestic or foreign corporations or other entities and the creation of one or more new domestic or foreign corporations or other entities.

TLLCA 1.02.A(10)

(10) "Merger" means (a) the division of a domestic limited liability company into two or more new domestic limited liability companies or into a surviving limited liability company and one or more new domestic or foreign limited liability companies or other entities, or (b) the combination

of one or more domestic limited liability companies with one or more domestic or foreign limited liability companies or other entities resulting in (i) one or more surviving domestic or foreign limited liability companies or other entities, (ii) the creation of one or more new domestic or foreign limited liability companies or other entities, or (iii) one or more surviving domestic or foreign limited liability companies or other entities and the creation of one or more new domestic or foreign limited liability companies or other entities.

TRLPA 1.02(8)

(8) "Merger" means (a) the division of a domestic limited partnership into two or more new domestic limited partnerships or into a surviving limited partnership and one or more new domestic or foreign limited partnerships or other entities, or (b) the combination of one or more domestic limited partnerships with one or more domestic or foreign limited partnerships or other entities resulting in (i) one or more surviving domestic or foreign limited partnerships or other entities, (ii) the creation of one or more new domestic or foreign limited partnerships or other entities, or (iii) one or more surviving domestic or foreign limited partnerships or other entities and the creation of one or more new domestic or foreign limited partnerships or other entities.

Revisor's Note:

No substantive change is intended.

Revised Law:

(56) "Non-code organization" means an organization other than a domestic entity.

Source Law:

TBCA 1.02.A(20)

(20) "Other entity" means any entity, whether organized for profit or not, that is a corporation (other than a domestic or foreign corporation), limited or general partnership, limited liability company, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, trust, insurance company or other legal entity organized pursuant to the laws of this state or any other state or country.

TLLCA 10.07

A. For purposes of this Part, "other entity" means any entity, whether organized for profit or not, that is a corporation, limited partnership, general partnership, joint venture, joint stock company, cooperative, association, bank, insurance company, or other legal entity organized under the laws of this state or any other state or country to the extent the laws or the constituent documents of that entity, not inconsistent with law, permit that entity to enter into a merger or interest exchange as permitted by this Part.

TRLPA 2.15(h)(4)

(4) "Other entity" means any entity, whether organized for profit or not, that is a corporation, partnership (other than a limited partnership or a general partnership (including a joint venture) governed by the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes)), limited liability company, joint stock company, cooperative, association, bank, insurance company, or other legal entity

organized pursuant to the laws of this state or any other state or country.

TRPA 9.05(i)(6)

(6) "Other entity" means any entity, whether organized for profit or not, that is a corporation, limited partnership (other than a limited partnership formed under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes)), limited liability company, joint stock company, cooperative, association, bank, insurance company, or other legal entity organized pursuant to the laws of this state or any other state or country.

Revisor's Note:

The term "non-code organization" is derived from the term "other entity" in the source law. It is used primarily in the definition of "merger" and in Chapter 10. The term "other entity" could not be used in the revised law due to the potential for confusion with the term "entity," as used in the revised law. The term includes Texas banks and insurance companies as well as foreign organizations.

Revised Law:

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

Source Law:

New

Revisor's Note:

This new term is defined negatively by reference to a filing entity. See Revisor's Note to the term "filing entity." The term "nonfiling entity" includes general partnerships and nonprofit associations. These entities do not require formal filings for their formation.

Revised Law:

(58) "Nonprofit association" means an association governed as a nonprofit association under Chapter 252.

Source Law:

TUUNAA 2(2)

(2) "Nonprofit association" means 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. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

Revisor's Note:

This definition cross-references to the term as defined in Chapter 252.

Revised Law:

(59) "Nonprofit corporation" means a corporation governed as a nonprofit corporation under Chapter 22.

Source Law:

TNPCA 1.02.A(3)

(3) "Non-Profit Corporation" is the equivalent of "not for profit corporation" and means a corporation no part of the income of which is distributable to its members, directors, or officers.

Revisor's Note:

This definition cross-references to the term as defined in Chapter 22.

Revised Law:

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

Source Law:

New

Revisor's Note:

The universe of entities is divided into "for-profit entities" and "nonprofit entities." A "nonprofit entity" is an entity that is organized solely for one or more of the nonprofit or charitable purposes specified in Section 2.002 and includes a nonprofit corporation and nonprofit association.

Revised Law:

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

Source Law:

New

Revisor's Note:

The term "officer" is used extensively in existing Texas statutes without any explicit definition. The revised law supplies a definition of the term, which is implicit in the existing statutes.

Revised Law:

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

Source Law:

New

Revisor's Note:

The new term "organization" is intended to refer in the broadest sense to any kind of entity or organization regardless of jurisdiction of formation or purpose. "Organizations" formed under Texas law other than the Code, for example banks and insurance companies, are neither domestic entities nor foreign entities.

Revised Law:

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

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

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

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

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

Source Law:

New

Revisor's Note:

This new generic term permits easy reference in Titles 1, 7 and 8 of the Code to the owners of different types of for-profit entities. Each entity has either "owners" or "members" which in turn have "ownership interests" or "membership interests", respectively, in the entity. For-profit corporations, real estate investment trusts and partnerships have "owners", while nonprofit corporations and unincorporated nonprofit associations have "members". Limited liability companies and professional associations have both "members" and "owners", and these terms are used interchangeably for these kinds of entities.

Revised Law:

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

Source Law:

New

Revisor's Note:

See Revisor's Note to the term "owner" above.

Revised Law:

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

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

(B) possesses at least 50 percent of the voting power of the owners or members of another organization.

Source Law:

TMCLA 2.06.C(2)

(2) "parent" means a domestic or foreign corporation or other entity that at the time of the action owns 50 percent or more of the outstanding voting interests or other ownership interest of the guarantor corporation:

(a) by itself;

(b) through one or more of its subsidiaries; or

(c) with one or more of its subsidiaries; and

Revisor's Note:

No substantive change is intended. This term permits easy reference to the parent of a subsidiary in the revised law. Examples of the usage of this term are found in Sections 2.104 and 10.006.

Revised Law:

(66) "Partner" means a limited partner or general partner.

Source Law:

TRLPA 1.02(9)

(9) "Partner" means a limited or general partner.

Revisor's Note:

No substantive change is intended.

Revised Law:

(67) "Partnership" means an entity governed as a partnership under Title 4.

Source Law:

TRPA 1.01(11)

(11) "Partnership" means an entity created as described by Section 2.02(a). . . .

Revisor's Note:

No substantive change is intended. The term "partnership" includes both a general partnership and a limited partnership, which are both governed by Title 4. The term also includes limited liability partnerships by virtue of the definition of that term and the inclusion of that type of entity in the definition of "general partnership."

Revised Law:

(68) "Partnership interest" means a partner's interest in a partnership. The term includes the partner's share of profits and losses or similar items and the right to receive distributions. The term does not include a partner's right to participate in management.

Source Law:

TRLPA 1.02(11)

(11) "Partnership interest" means a partner's interest in a limited partnership, including the right to receive distributions of partnership assets and the right to receive allocations of income, gain, loss, deduction, or credit of the partnership.

TRPA 1.01(13)

(13) "Partnership interest" means a partner's interest in a partnership, including the partner's share of profits and losses or similar items, and the right to receive distributions. A partnership interest does not include a partner's right to participate in management.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

Source Law:

TBCA 5.03.I(4)

(4) "Party to the merger" means:

(a) a domestic corporation that is to be divided into two or more new domestic corporations or into a surviving corporation and one or more new domestic or foreign corporations or other entities pursuant to a plan of merger; or

(b) a domestic or foreign corporation or other entity that is to be combined with one or more domestic or foreign corporations or other entities pursuant to a plan of merger resulting in (i) one or more surviving domestic or foreign corporations or other entities, (ii) the creation of one or more new domestic or foreign corporations or other entities, or (iii) one or more surviving domestic or foreign corporations or other entities and the creation of one or more new domestic or foreign corporations or other entities. A domestic or foreign corporation or other entity that is a party to a plan of merger that is not to be divided or combined into or with one or more domestic or foreign corporations or other entities is not considered to be a party to the merger even if shares, securities, or other property of such party is to be issued pursuant to the plan of merger.

Revisor's Note:

No substantive change is intended. The language of the revised law is simplified from that of the source law.

Revised Law:

(70) "President" means the:

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

(B) officer or committee of persons authorized to perform the functions of the principal executive officer of an entity without regard to the designated name of the officer or committee.

Source Law:

TNPCA 1.02.A(8)

(8) "President" means that officer designated as "president" in the articles of incorporation or by-laws of a corporation, or that officer authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which he may be designated, or that committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer.

Revisor's Note:

No substantive change is intended.

Revised Law:

(71) "Professional association" has the meaning assigned by Section 301.003.

Source Law:

TPAA 2.(A)

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws. (Eff. 6/11/01)

(A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(Eff. 6/14/01)

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(72) "Professional corporation" has the meaning assigned by Section 301.003.

Source Law:

TPCA 3(b)

(b) "Professional Corporation" means a corporation organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation.

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(73) "Professional entity" has the meaning assigned by Section 301.003.

Source Law:

TLLCA 11.01.B(4)

(4) "Professional entity," with respect to any professional limited liability company, means a person (other than an individual), whether organized for profit or not, including corporations organized under the Texas Non-Profit Corporation Act (Article 1396-1.01, Vernon's Texas Civil Statutes), and unincorporated associations governed by the Texas Uniform Unincorporated Nonprofit Association Act (Article 1396-70.01, Vernon's Texas Civil Statutes), that renders the same professional service as such professional limited liability company only through partners, members, shareholders, managers, directors, associates, officers, employees, or agents who are professional individuals or professional entities.

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(74) "Professional individual" has the meaning assigned by Section 301.003.

Source Law:

TLLCA 11.01.B(3)

(3) "Professional individual," with respect to any professional limited liability company, means an individual who is licensed or otherwise authorized to render the same professional service as such professional limited liability company, either within this state or in any other jurisdiction.

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(75) "Professional limited liability company" has the meaning assigned by Section 301.003.

Source Law:

TLLCA 11.01.B(2)

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(76) "Professional service" has the meaning assigned by Section 301.003.

Source Law:

TLLCA 11.01.B(1)

(1) "Professional service" means any type of personal service that requires as a condition precedent to the rendering of the service the obtaining of a license, permit, certificate of registration, or other legal authorization, including the personal service rendered by an architect, attorney-at-law, certified public accountant, dentist, doctor, physician, public accountant, surgeon, or veterinarian.

TPAA 3

Sec. 3. As used in this Act, the term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, and which service by law cannot be performed by a corporation. The term "license" includes a license, certificate of registration or any other evidence of the satisfaction of state requirements.

TPCA 3(a)

(a) "Professional Service" means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects, attorneys-at-law, certified public accountants, dentists, public accountants, and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since

there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

Revisor's Note:

This definition cross-references to the definition of this term in Title 7.

Revised Law:

(77) "Property" includes tangible and intangible property and an interest in that property.

Source Law:

TRPA 1.01(15)

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or an interest in that property.

Revisor's Note:

No substantive change is intended.

Revised Law:

(78) "Real estate investment trust" means an entity governed as a real estate investment trust under Title 5.

Source Law:

TREITA 2.10

Sec. 2.10. A real estate investment trust is an unincorporated trust formed by one or more trust managers under Section 3.10 of this Act and managed in accordance with this Act.

Revisor's Note:

No substantive change is intended. This definition cross-references to the definition of this term in Title 7.

Revised Law:

(79) "Secretary" means the:

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

(B) officer or committee of persons authorized to perform the functions of secretary of an entity without regard to the designated name of the officer or committee.

Source Law:

TNPCA 1.02.A(10)

(10) "Secretary" means that officer designated as "secretary" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of secretary, irrespective of the name by which he, or they, may be designated.

Revisor's Note:

No substantive change is intended.

Revised Law:

(80) "Share" means a unit into which the ownership interest in a for-profit corporation, professional corporation, real estate investment trust or professional association is divided, regardless of whether the share is certificated or uncertificated.

Source Law:

TBCA 1.02.A(23)

(23) "Shares" means the units into which the proprietary interests in a corporation are divided, whether certificated or uncertificated shares.

TPAA 10

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

TPCA 12

Sec. 12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. . . .

TREITA 3.10(A)(7)

(7) The aggregate number of shares of beneficial interest the real estate investment trust shall have authority to issue and the par value to be received by the real estate investment trust for the issuance of each of such shares . . .

Revisor's Note:

No substantive change is intended. Although the definition of this term is taken from the TBCA, it is also used in TREITA, TPCA and the TPAA with the same meaning. The TBCA is incorporated as supplemental law into the TREITA, TPCA and the TPAA.

Revised Law:

(81) "Shareholder" or "holder of shares" means the person in whose name shares issued by a for-profit corporation, professional corporation or real estate investment trust are registered in the share transfer records maintained by the for-profit corporation, professional corporation or real estate investment trust.

Source Law:

TBCA 1.02.A(22)

(22) "Shareholder" or "holder of shares" means the person in whose name shares issued by a corporation are registered at the relevant time in the share transfer records maintained by the corporation pursuant to Article 2.44 of this Act.

Revisor's Note:

No substantive change is intended. Although the definition of the term is taken from the TBCA, it is also used in TREITA with the same meaning. The TBCA is incorporated as supplemental law into the TREITA. The TPAA uses the term "members" instead of "shareholders;" therefore, the definition does not apply to professional associations under the Code.

Revised Law:

(82) "Signature" means any symbol executed or adopted by a person with present intention to authenticate a writing. Unless the context requires otherwise, the term includes a digital signature, an electronic signature, and a facsimile of a signature.

Source Law:

Texas Business & Commerce Code (Uniform Electronic Transactions Act) 43.002(8)

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Texas Government Code 311.005(6)

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

TMCLA Art. 1302-7.07.C

C. For purposes of this article, any signature on any instrument required or authorized to be filed with the Secretary of State may be a facsimile, the mark made by a person unable to write, in an electronic format permitted by the rules of the Secretary of State, or any symbol executed or adopted by a person with the intent to authenticate a writing.

TRLPA 13.04(b)

(b) Any signature or mark made by a person unable to write on any certificate instrument, or other document required or authorized to be filed with the secretary of state may be a facsimile in an electronic format permitted by the rules of the secretary of state or any symbol executed or adopted by a person with the intent to authenticate a writing.

TRPA 3.08(12)

(12) A document filed under this subsection may be a photographic, facsimile, or similar reproduction of a signed document. A signature on a document filed under this section may be a facsimile, the mark made by a person unable to write, in electronic format permitted by the rules of the secretary of state or any symbol executed or adopted by a person with the intent to authenticate a writing.

Revisor's Note:

The revised law has modernized and clarified current definitions of signature to include digital, as well as electronic and facsimile signatures, by defining "signature" to mean any symbol executed or adopted by a person with present intention to authenticate a writing and includes a digital signature, electronic signature or a facsimile of such. It is derived from the Uniform Electronic Transaction Act, the Texas Miscellaneous Corporation Laws Act, the Texas Revised Limited

Partnership Act, the Texas Revised Partnership Act, and the Code Construction Act. This definition enables electronic filings. The term "electronic signature" in this definition should be construed to have the meaning assigned to it in the Uniform Electronic Transactions Act, Section 43.001(18) of the Texas Bus. & Com. Code.

Revised Law:

(83) "Subscriber" means a person who agrees with or makes an offer to an entity to purchase by subscription an ownership interest in the entity.

Source Law:

TBCA 1.02.A(25)

(25) "Subscriber" means the offeror in a subscription.

Revisor's Note:

The revised definition of "subscriber" clarifies that the term also includes a person who agrees to purchase. Often, the entity makes the offer to sell an ownership interest and the subscriber accepts the offer. The source law depended on the offer being made by the person purchasing the ownership interest.

Revised Law:

(84) "Subscription" means an agreement between a subscriber and an entity, or a written offer made by a subscriber to an entity before or after the entity's formation, in which the subscriber agrees or offers to purchase a specified ownership interest in the entity.

Source Law:

TBCA 1.02.A(26)

(26) "Subscription" means a memorandum in writing, executed before or after incorporation, wherein an offer is made to purchase and pay for a specified number of theretofore unissued shares of a corporation.

Revisor's Note:

The revised definition of "subscription" clarifies that the term also includes an agreement to purchase an ownership interest. See the Revisor's Note to the definition of "subscriber" above.

Revised Law:

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

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

(B) possesses at least 50 percent of the voting power of the owners or members of the organization.

Source Law:

TMCLA 2.06.C(1)

(1) "subsidiary" means a domestic or foreign corporation or other entity, 50 percent or more of the outstanding voting interests or other ownership interest of which is owned at the time of the action:

(a) by the guarantor corporation itself;

(b) by one or more of the guarantor corporation's subsidiaries; or

(c) by the guarantor corporation and one or more of its subsidiaries;

Revisor's Note:

No substantive change is intended. Examples of the usage of this term are found in Sections 2.104 and 10.006.

Revised Law:

(86) "Treasurer" means the:

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

(B) officer or committee of persons authorized to perform the functions of treasurer of an entity without regard to the designated name of the officer or committee.

Source Law:

TNPCA 1.02.A(11)

(11) "Treasurer" means that officer designated as "treasurer" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of a treasurer, irrespective of the name by which he, or they, may be designated.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

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

(B) registration on books maintained by or on behalf of the entity for the purpose of registering transfers of ownership interests.

Source Law:

TBCA 1.02.A(29)

(29) "Uncertificated shares" means shares not represented by instruments and the transfers of which are registered upon

books maintained for that purpose by or on behalf of the issuing corporation.

Revisor's Note:

The revised law adds a new phrase "uncertificated ownership interest" to mean those ownership interests in domestic entities that are not represented by an instrument and are transferred either by amendment of the governing documents or by registration on books maintained for that purpose. The use of the term "uncertificated" in connection with particular types of ownership interests throughout the Code should have a similar meaning.

Revised Law:

(88) "Vice president" means the:

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

(B) officer or committee of persons authorized to perform the functions of the president of the entity on the death, absence, or resignation of the president or on the inability of the president to perform the functions of office without regard to the designated name of the officer or committee.

Source Law:

TNPCA 1.02.A(9)

(9) "Vice-president" means that officer designated as "vice-president" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the duties of the president upon the death, absence, or resignation of the president or upon his inability to perform the duties of his office, irrespective of the name by which he, or they, may be designated.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

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

(B) does not include sound or video recordings of speech other than transcriptions that are otherwise writings.

Source Law:

Texas Business & Commerce Code 1.201(46)

(46) "Written" or "writing" includes printing, typewriting, or any intentional reduction to tangible form.

Texas Business & Commerce Code (Uniform Electronic Transactions Act) 43.002, 43.007 & 43.008(a)

Sec. 43.002 . . . "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 43.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.(c) If a law requires a record to be in writing, an electronic record satisfies the law. (d) If a law requires a signature, an electronic signature satisfies the law.

Sec. 43.008. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Texas Government Code 312.011(17)

(17) "Written" or "in writing" includes any representation of words, letters, or figures, whether by writing, printing, or other means.

Revisor's Note:

The terms "writing" or "written" are defined in a manner that parallels the definition of "record" in the Uniform Electronic Transactions Act and is consistent with other provisions in the Uniform Electronic Transactions Act, the Government Code and the Business & Commerce Code. Consequently, these terms are modernized and clarified to encompass textual information stored in an electronic or other medium that is retrievable in a perceivable form, and include electronic data and transmissions and reproductions of writings. These terms do not include sound or video recordings.

Revised Law:

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

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

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

(b) For purposes of Subsection (a), a person is not materially involved in a contract or transaction that is the subject of a claim or

challenge and does not have a material financial interest in the outcome of a contract or transaction or the disposition of a claim or challenge solely because:

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

(A) interested in the contract or transaction; or

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

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

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

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

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

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

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

(B) the person, acting as a governing person, approved, voted for, or acquiesced in the act being challenged if the act did not result in a material personal or financial benefit to the person and the challenging party fails to allege particular facts that, if true, raise a significant prospect that the governing person would be held liable to the entity or its owners or members as a result of the conduct.

Source Law:

TBCA 1.02.A(12)

(12) "Disinterested," when used to indicate a director or other person is disinterested in a contract, transaction, or other matter for purposes of approval of a contract or transaction under Article 2.35-1 of this Act and for purposes of considering the disposition of a claim or challenge with respect to a particular contract or transaction or to particular conduct means the director or other person, or an associate of the director (other than the corporation and its associates) or other person, is not a party to the contract or transaction or is not materially involved in the conduct that is subject to the claim or challenge and does not otherwise have a material financial interest in the outcome of the contract or transaction or the disposition of the claim or challenge. A director or other person is not to be considered to be materially involved in conduct that is subject to a claim or challenge or to otherwise have a material financial interest in the outcome of a contract or transaction or the disposition of the claim or challenge solely by reason of the existence of one or more of the following circumstances:

(a) the person was nominated or elected as a director by persons who are interested in the contract or transaction or who are alleged to have engaged in the conduct that is subject to the claim or challenge;

(b) the person receives normal director's fees or similar customary compensation, expense reimbursement, and benefits as a director of the corporation;

(c) the person has a direct or indirect equity interest in the corporation;

(d) the corporation or its subsidiaries has an interest in the contract or transaction or was affected by the alleged conduct;

(e) the person or an associate or affiliate of the person receives ordinary and reasonable compensation for services rendered to review, make recommendations, or decide on the disposition of the claim or challenge; or

(f) in the case of a review by the person of alleged conduct that is subject to a claim or challenge:

(i) the person is named as a defendant in the derivative proceeding with respect to such matter or as a person who engaged in the alleged conduct; or

(ii) the person approved of, voted for, or acquiesced in, as a director, the act being challenged if the act resulted in no material personal or financial benefit to the person and the challenging party fails to allege with particularity facts that, if true, raise a significant prospect that the director would be adjudged liable to the corporation or its shareholders by reason of that conduct.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

(1) is disinterested;

(2) either:

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

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

(3) does not have a business, financial, or familial relationship with a party to the contract or transaction, or with another person who is alleged to have engaged in the conduct, that is the subject of

the claim or challenge that could reasonably be expected to materially and adversely affect the judgment of the person in favor of the party or other person with respect to the consideration of the matter; and

(4) is not shown, by a preponderance of the evidence, to be under the controlling influence of a party to the contract or transaction that is the subject of the claim or challenge or of a person who is alleged to have engaged in the conduct that is the subject of the claim or challenge.

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

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

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

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

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

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

(6) the person, an associate of the person, other than the entity or its associates, or an immediate family member has a continuing business relationship with the entity that is not material to the person, associate, or family member.

Source Law:

TBCA 1.02.A(15)

(15) "Independent," when used to indicate a director or other person is independent for purposes of considering the disposition of a claim or challenge with respect to a particular contract or transaction or to particular conduct or alleged conduct means:

(a) the director or other person is disinterested;

(b) the director or other person is not an associate (other than by reason of being a director of the corporation or one more of its subsidiaries or associates) or member of the immediate family of a party to the contract or transaction that is the subject of the claim or challenge or that is alleged to have engaged in the conduct that is subject to the claim or challenge;

(c) the director or other person, or an associate or member of the immediate family of the director or other person, does not have a business, financial, or familial relationship with a party to the contract or transaction that is the subject of the claim or challenge or that is alleged to have engaged in

conduct that is subject to the claim or challenge, which, in each case, could reasonably be expected to materially and adversely affect the director's or other person's judgment with respect to the consideration of the disposition of the matter subject to the claim or challenge in the interests of the corporation; and

(d) the director or other person is not otherwise shown, by a preponderance of the evidence by the person challenging the independence of the director or other person, to be under the controlling influence of a party to the contract or transaction that is the subject of the claim or challenge or that is alleged to have engaged in conduct that is subject to the claim or challenge.

A director or other person is not considered to have a relationship that could be expected to materially and adversely affect the director's or other person's judgment with respect to the consideration of the disposition of a matter subject to a claim or challenge or to otherwise be under the controlling influence of a party to a contract or transaction that is the subject of the claim or challenge or that is alleged to have engaged in conduct that is subject to a claim or challenge solely by reason of the existence of one or more of the following circumstances:

(a) the person has been nominated or elected as a director by persons who are interested in the contract or transaction or who are alleged to have engaged in the conduct that is subject to the claim or challenge;

(b) the person receives normal director's fees or similar customary compensation, expense reimbursement, and benefits as a director of the corporation;

(c) the person has a direct or indirect equity interest in the corporation;

(d) the corporation or its subsidiaries have an interest in the contract or transaction or were affected by the alleged conduct;

(e) the person or an associate or affiliate of such person receives ordinary and reasonable compensation for services rendered to review, make recommendations, or decide on the disposition of the claim or challenge; or

(f) the person or an associate (other than the corporation and its associates), immediate family, member or affiliate of the person has an ongoing business relationship with the corporation that is not material to that person, associate, family member, or affiliate.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 1.005. CONSPICUOUS INFORMATION. In this code, required information is conspicuous if the information is placed in a manner or displayed using a font that provides or should provide notice to a reasonable person affected by the information. Required information in a document is conspicuous if the font used for the information is capitalized, boldfaced,

italicized, or underlined or larger or of a different color than the remainder of the document.

Source Law:

TBCA 1.02.A(6)

(6) "Conspicuous" or "conspicuously," when prescribed for information appearing on a certificate for shares or other securities, means the location of such information or use of type of sufficient size, color, or character that a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or boldface or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate, is "conspicuous."

Revisor's Note:

No substantive change is intended.

Revised Law:

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

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

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

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

(4) a reference to a "certificate of registration," "certificate of authority," and "permit to do business" includes "registration";

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

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

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

(8) a reference to "paid-up capital" includes "stated capital."

Source Law:

TMCLA 1302-1.02

Art. 1302-1.02. Synonymous Terms

A. Whether used in this Act or in other Acts and statutes applicable to private corporations:

(1) "Charter" has the same meaning as "articles of incorporation."

(2) "Paid-up capital" has the same meaning as "stated capital."

(3) "Capital stock" may mean, depending on the context, "stated capital," "authorized shares," "authorized and issued shares," or "issued shares."

(4) "Permit to do business" and "certificate of authority" have the same meaning.

(5) "Stockholder" and "shareholder" have the same meaning.

(6) "Stock" and "shares of stock" have the same meaning as "shares."

(7) "Authorized capital stock" has the same meaning as "authorized shares."

(8) "No par shares" means the same as "shares without par value."

Revisor's Note:

This section is revised to employ the new language of the revised law in the case of "certificate of formation" and "registration."

Revised Law:

Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING. For purposes of this code, a writing has been signed by a person when the writing includes the person's signature. A transmission or reproduction of a writing signed by a person is considered signed by that person for purposes of this code.

Source Law:

TBCA 9.10.A(3)

(3) A telegram, telex, cablegram, or similar transmission by a shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a shareholder, shall be regarded as signed by the shareholder for purposes of this Section.

TLLCA 2.23.B(2)

(2) Unless otherwise provided in the regulations, a telegram, telex, cablegram, or similar transmission by a person, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a person, shall be regarded as signed by that person for the purposes of this Article.

TMCLA 7.07.B & C

B. Any original instrument required or authorized to be filed with the Secretary of State under any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas Limited Liability Company Act or any special Statute of this State pertaining to a particular type of corporation or entity to which the general corporate laws are applicable, may be a photographic, photostatic, facsimile, or similar reproduction of a signed instrument.

C. For purposes of this article, any signature on any instrument required or authorized to be filed with the Secretary of State may be a facsimile, the mark made by a person unable to write, in an electronic format permitted by the rules of the Secretary of State, or any symbol executed or adopted by a person with the intent to authenticate a writing.

TNPCA 9.10.C(5)

(5) A telegram, telex, cablegram, or similar transmission by a member, director, or member of a committee or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a member, director, or member of a committee shall be regarded as signed by the member, director, or member of a committee for purposes of this article.

TRLPA 13.04(b)

(b) Any signature or the mark made by a person unable to write on any certificate, instrument, or other document required or authorized to be filed with the secretary of state may be a facsimile in an electronic format permitted by the rules of the secretary of state or any symbol executed or adopted by a person with the intent to authenticate a writing.

TRPA 3.08(a)(12)

(12) A document filed under this subsection may be a photographic, facsimile, or similar reproduction of a signed document. A signature on a document filed under this section may be a facsimile, the mark made by a person unable to write, in electronic format permitted by the rules of the secretary of state or any symbol executed or adopted by a person with the intent to authenticate a writing.

Revisor's Note:

No substantive change is intended. The first sentence of the revised law clarifies what is meant by "signing" a writing and is implicit in the source law.

Revised Law:

Sec. 1.008. SHORT TITLES.

(a) The provisions of this code as described by this section may be cited as provided by this section.

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

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

(d) The provisions of Chapters 20 and 22 and the provisions of Title 1 to the extent applicable to nonprofit corporations may be cited as the "Texas Nonprofit Corporation Law."

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

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

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

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

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

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

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

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

(m) The provisions of Chapters 301 and 303 and the provisions of Chapters 20 and 21 and Title 1 to the extent applicable to professional corporations may be cited as the "Texas Professional Corporation Law."

(n) The provisions of Chapters 301 and 304 and the provisions of Titles 1 and 3 to the extent applicable to professional limited liability companies may be cited as the "Texas Professional Limited Liability Company Law."

Source Law:

CAA 1

Sec. 1. This Act may be cited as the Cooperative Association Act.

TBCA 1.01.A

A. This Act shall be known and may be cited as the "Texas Business Corporation Act."

TLLCA 1.01.A

Art. 1.01. A. This act shall be known and may be cited as the "Texas Limited Liability Company Act."

TNPCA 1.01.A

A. This Act shall be known and may be cited as the "Texas Non-Profit Corporation Act."

TPAA 1

Sec. 1. This Act may be cited as the Texas Professional Association Act.

TPCA 1

Sec. 1. This Act shall be known and may be cited as "The Texas Professional Corporation Act."

TREITA 1.10

Sec. 1.10. This Act shall be known and may be cited as the "Texas Real Estate Investment Trust Act."

TRLPA 1.01

Sec. 1.01. This Act may be cited as the Texas Revised Limited Partnership Act.

TRPA 11.01

Art. 6132b-11.01. Short Title

This Act may be cited as the "Texas Revised Partnership Act."

TUUNAA 1

Sec. 1. This Act may be cited as the Texas Uniform Unincorporated Nonprofit Association Act.

Revisor's Note:

Section 1.008 creates short-hand references to portions of the Code. These references are similar in name to the predecessor standalone acts governing the different types of entities.

Revised Law:

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

Source Law:

New

Revisor's Note:

No substantive change is intended. This section clarifies that all monetary terms are considered to be references to United States dollars. This rule is implicit in the existing Texas statutes.

(Sections 1.010-1.050 reserved for expansion)

SUBCHAPTER B. CODE CONSTRUCTION

Revised Law:

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

Source Law:

New

Revisor's Note:

This provision is contained in all new Texas codes. It clarifies that the Code Construction Act supplements the revised law.

Revised Law:

Sec. 1.052. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

Source Law:

TBCA 1.02.C

C. A reference in this Act to another statute is a reference to that statute as amended.

Revisor's Note:

This provision is contained in all new Texas codes. It clarifies the effect of the codification on cross-references to the old recodified statutes that are contained in other statutes.

Revised Law:

Sec. 1.053. APPLICABILITY TO FOREIGN AND INTERSTATE AFFAIRS. This code applies to the conduct of affairs with foreign countries and the other states of the United States only to the extent permitted under the United States Constitution.

Source Law:

TBCA 9.11

Art. 9.11. Application to Foreign and Interstate Commerce

A. The provisions of this Act shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

TLLCA 8.09

Art. 8.09. A. The provisions of this Act shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States.

TNPCA 10.01

Art. 1396-10.01. Application to Foreign and Interstate Affairs

A. The provisions of this Act shall apply to the conduct of affairs with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

Revisor's Note:

No substantive change is intended. Although a similar provision is not found in the partnership statutes, this rule is implicit in existing Texas law and federal constitutional law.

Revised Law:

Sec. 1.054. RESERVATION OF POWER. The legislature at all times has the power to amend, repeal, or modify this code and to prescribe regulations, provisions, and limitations as the legislature considers advisable. The regulations, provisions, and limitations are binding on any entity subject to this code.

Source Law:

TBCA 9.12

Art. 9.12. Reservation of Power

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

TLLCA 8.10

Art. 8.10. A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all limited liability companies subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

TNPCA 10.02

Art. 1396-10.02. Reservation of Power

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

TRPA 1.06

Art. 6132b-1.06. Partnership Subject to Amendment or Repeal of Act

A partnership governed by this Act is subject to an amendment or repeal of this Act.

Revisor's Note:

No substantive change is intended. This provision recognizes the legislature's power to change the revised law as to then existing entities. As with the source law, this section is intended to negate old jurisprudence in the corporate area that implied the contrary result.

(Sections 1.055-1.100 reserved for expansion)

SUBCHAPTER C. DETERMINATION OF APPLICABLE LAW

Revised Law:

Sec. 1.101. DOMESTIC FILING ENTITIES. The law of this state governs the formation and internal affairs of an entity if the entity's formation occurs when a certificate of formation filed in accordance with Chapter 4 takes effect.

Source Law:

CAA 2(1)

(1) "Association" means a group enterprise legally incorporated under this Act.

TBCA 1.02.A(11)

(11) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

TLLCA 1.02.A(3)

(3) "Limited Liability Company" or "Company" means a limited liability company organized and existing under this chapter.

TNPCA 1.02.A(1)

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

TPAA 2(A)

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws. (Eff. 6/11/01)

(A) Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(Eff. 6/14/01)

TPCA 6

Sec. 6. A professional corporation may be organized under this Act only for the purpose of rendering one specific type of professional service and services ancillary thereto.

TREITA 2.10

Sec. 2.10. A real estate investment trust is an unincorporated trust formed by one or more trust managers under Section 3.10 of this Act and managed in accordance with this Act.

TRLPA 1.02(5) & (6)

(5) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided by Section 3.01 of this Act or, in the case of a foreign limited partnership, in accordance with the laws of the state under which the limited partnership is organized.

(6) "Limited partnership" means a partnership formed by two or more persons under the laws of Texas and having one or more general partners and one or more limited partners.

TRPA 1.01(11)

(11) "Partnership" means an entity created as described by Section 2.02(a). The term includes a registered limited liability partnership formed under Section 3.08 or under the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments.

TRPA 1.05(a)

(a) Internal Affairs. The determination whether a partnership has been formed, a partnership's internal affairs, and the relations of the partners to one another are governed by:

(1) the law of the state chosen by the partners to govern if that state bears a reasonable relation to the partners or to the partnership business and affairs under principles that apply to a contract among the partners other than the partnership agreement; or

(2) if the partners do not choose a governing law under Subdivision (1), the law of the state in which the partnership has its chief executive office.

Revisor's Note:

Subchapter C of Chapter 1 contains rules specifying what law governs the formation and internal affairs of domestic and foreign entities. These provisions are derived from existing statutes. Generally, the law of the state or other jurisdiction in which an entity is formed governs the formation and internal affairs of the entity. The liability of an owner, member or managerial official of the entity is also governed by the same law.

The revised law is derived primarily from the provisions of the TRPA but is implicit in the definitions of the domestic entities covered by each of the other source laws as well as the basic structure of the existing statutes. It is also implicit as the inverse of the rule for foreign entities reflected in the source laws for Section 1.102.

Revised Law:

Sec. 1.102. FOREIGN FILING ENTITIES. If the formation of an entity occurs when a certificate of formation or similar instrument filed with a foreign governmental authority takes effect, the law of the state or other jurisdiction in which that foreign governmental authority is located governs the formation and internal affairs of the entity.

Source Law:

TBCA 8.02

Art. 8.02. Powers of Foreign Corporation

A. . . . provided, however, that only the laws of the jurisdiction of incorporation of a foreign corporation shall govern (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and shareholders and matters relating to its shares

TLLCA 7.02

Art. 7.02. A. . . . provided, however, that only the laws of the jurisdiction of organization of a foreign limited liability company shall govern (1) the internal affairs of the foreign limited liability company, including but not limited to the rights, powers, and duties of its manager and members and matters relating to its ownership

TNPCA 8.02

Art. 1396-8.02. Powers of Foreign Corporations

A. . . . provided, however, that the laws of the jurisdiction of incorporation of a foreign corporation shall govern (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and members and matters relating to its membership

TRLPA 9.01(a)

Sec. 9.01. (a) The laws of the state under which a foreign limited partnership is formed govern its organization and internal affairs and the liability of its partners.

Revisor's Note:

No substantive change is intended with respect to the entities covered by the source law. Section 1.102 goes beyond the source law and provides an explicit statutory rule with respect

to foreign entities that are formed pursuant to a filing in another jurisdiction but have no counterpart under Texas statutes, such as a foreign statutory business trust.

Revised Law:

Sec. 1.103. ENTITIES NOT FORMED BY FILING INSTRUMENT. If the formation of an entity does not occur when a certificate of formation or similar instrument filed with the secretary of state or with a foreign governmental authority takes effect, the law governing the entity's formation and internal affairs is the law of the entity's jurisdiction of formation.

Source Law:

TRPA 1.05(a)

(a) Internal Affairs. The determination whether a partnership has been formed, a partnership's internal affairs, . . . are governed by:

(1) the law of the state chosen by the partners to govern if that state bears a reasonable relation to the partners or to the partnership business and affairs under principles that apply to a contract among the partners other than the partnership agreement; or

(2) if the partners do not choose a governing law under Subdivision (1), the law of the state in which the partnership has its chief executive office.

TRPA 10.01(a)

(a) The laws of the state under which a foreign limited liability partnership is formed govern its organization and internal affairs

Revisor's Note:

No substantive change is intended with respect to partnerships, which are subject to a similar rule under the source law. Section 1.103 goes beyond the source law to provide an explicit statutory rule with respect to entities that are not covered by the source law, such as foreign common law business trusts and domestic and foreign unincorporated non-profit associations.

The alternative choices for the governing law found in the source law are contained in the definition of "jurisdiction of formation."

A limited liability partnership is not "formed" by a filing, but rather its status is confirmed through the filing of a statement. Therefore, it is covered by this section of the revised law and not Section 1.102.

Revised Law:

Sec. 1.104. LAW APPLICABLE TO LIABILITY. The law of the jurisdiction that governs an entity as determined under Sections 1.101-1.103 applies to the liability of an owner, a member, or a managerial official of the entity in the capacity as an owner, a member, or a managerial official for an obligation, including a debt or other liability, of the entity for which the owner, member, or managerial official is not otherwise liable by contract or under provisions of law other than this code.

Source Law:

TBCA 8.02

Art. 8.02. Powers of Foreign Corporation

A. . . . provided, however, that only the laws of the jurisdiction of incorporation of a foreign corporation shall govern . . . (2) the liability, if any, of shareholders of the foreign corporation for the debts, liabilities, and obligations of the foreign corporation for which they are not otherwise liable by statute or agreement.

TLLCA 7.02

Art. 7.02. A. . . . provided, however, that only the laws of the jurisdiction of organization of a foreign limited liability company shall govern . . . (2) the liability, if any, of members of the foreign limited liability company for the debts, liabilities and obligations of the foreign limited liability company for which they are not otherwise liable by statute or agreement.

TNPCA 8.02

Art. 1396-8.02. Powers of Foreign Corporations

A. . . . provided, however, that the laws of the jurisdiction of incorporation of a foreign corporation shall govern . . . (2) the liability, if any, of members of the foreign corporation for the debts, liabilities, and obligations of the foreign corporation for which they are not otherwise liable by statute or agreement.

TRLPA 9.01(a)

Sec. 9.01. (a) The laws of the state under which a foreign limited partnership is formed govern . . . the liability of its partners.

TRPA 1.05(b)

(b) Liability to Third Parties. The law governing a partnership's internal affairs also governs the liability of its partners to third parties.

TRPA 10.01(a)

(a) The laws of the state under which a foreign limited liability partnership is formed govern . . . the liability of partners for obligations of the partnership.

Revisor's Note:

No substantive change is intended with respect to the entities covered by the source laws. Section 1.104 goes beyond the source law and provides an explicit statutory rule for entities that are not covered by the source law, such as domestic entities other than partnerships (as to which the rule reflected in the revised law is implicit in the existing statutes) and foreign entities that have no counterpart under existing Texas statutes, such as foreign business trusts.

Revised Law:

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

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

(2) matters relating to its membership or ownership interests.

Source Law:

TBCA 8.02

Art. 8.02. Powers of Foreign Corporation

A. . . . (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and shareholders and matters relating to its shares,

TLLCA 7.02

Art. 7.02. A. . . . (1) the internal affairs of the foreign limited liability company, including but not limited to the rights, powers, and duties of its manager and members and matters relating to its ownership,

TNPCA 8.02

Art. 1396-8.02. Powers of Foreign Corporations

A. . . . (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and members and matters relating to its membership,

TRLPA 9.01(a)

Sec. 9.01. (a) The laws of the state under which a foreign limited partnership is formed govern its organization and internal affairs and the liability of its partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

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

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

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

Source Law:

New

Revisor's Note:

Because Title 1 of the revised law applies generally to all domestic entities, this section is necessary to establish which titles have precedence in the event of conflict.