

CHAPTER 2. PURPOSES AND POWERS OF DOMESTIC ENTITY

SUBCHAPTER A. PURPOSES OF DOMESTIC ENTITY

Revised Law:

Sec. 2.001. GENERAL SCOPE OF PERMISSIBLE PURPOSES. A domestic entity has any lawful purpose or purposes, unless otherwise provided by this code.

Source Law:

TBCA 2.01.A

A. Except as hereinafter in this Article excluded herefrom, corporations for profit may be organized under this Act for any lawful purpose or purposes. . . .

TLLCA 2.01.A

A. A limited liability company formed under this Act may engage in any lawful business unless a more limited purpose is stated in its articles of organization or regulations.

TNPCA 2.01.A

A. Except as hereinafter in this Article expressly excluded herefrom, non-profit corporations may be organized under this Act for any lawful purpose or purposes

TRLPA 1.09(a)

Sec. 1.09. (a) A limited partnership formed under this Act may engage in any lawful business unless a more limited purpose is stated in its partnership agreement.

Revisor's Note:

Unincorporated nonprofit associations are not governed by Chapter 2 by virtue of Section 252.017 of the Code. Therefore, TUUNAA is not shown as one of the source laws for this Chapter.

The TLLCA permits the business in which a limited liability company may engage to be qualified by its articles of organization or regulations. Similarly, the TRLPA permits the business in which a limited partnership may engage to be qualified by its partnership agreement. These qualifications are not necessary in the revised law because these requirements are contained in other sections of Chapter 2. The revised law chooses to use the term "purpose or purposes" in lieu of "business" because the revised law also governs nonprofit entities, which may not be construed to have a business.

Revised Law:

Sec. 2.002. PURPOSES OF NONPROFIT ENTITY. The purpose or purposes of a domestic nonprofit entity may include one or more of the following purposes:

(1) serving charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural, and horticultural purposes;

(2) operating or managing a professional, commercial, or trade association or labor union;

(3) providing animal husbandry; or

(4) operating on a nonprofit cooperative basis for the benefit of its members.

Source Law:

TNPCA 2.01.A

A. . . . Such purpose or purposes may include, without being limited to, any one or more of the following: charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural; and the conduct of professional, commercial, industrial, or trade associations; and animal husbandry. . . .

Revisor's Note:

The revised law omits "industrial" because it is redundant with "commercial." Although no existing statutes, other than the TNPCA or TUUNAA, specifically apply to nonprofit entities, the revised law permits nonprofit status in limited liability companies. Partnerships cannot be nonprofit entities because one of the tests for existence of a partnership is that it is formed for the purpose of making a profit.

Revised Law:

Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity may not:

(1) engage in a business or activity that:

(A) is expressly unlawful or prohibited by a law of this state;

(B) cannot lawfully be engaged in by that entity under state law; or

(C) may not be engaged in by an entity without first obtaining a license under the laws of this state to engage in that business or activity and a license cannot lawfully be granted to the entity; or

(2) operate as a:

(A) bank;

(B) trust company;

(C) savings association;

(D) insurance company;

(E) railroad company;

(F) cemetery organization; or

(G) abstract or title company governed by Chapter 9, Insurance Code.

Source Law:

CAA 6(4)

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended,
. . . .

TBCA 2.01.B(1), (2) & (4)

B. No corporation may adopt this Act or be organized under this Act or obtain authority to transact business in this State under this Act:

(1) If any one or more of its purposes for the transaction of business in this State is expressly prohibited by any law of this State.

(2) If any one or more of its purposes for the transaction of business in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such a license cannot lawfully be granted to a corporation.

* * *

(4) If any one or more of its purposes is to operate any of the following:

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that operate under the insurance laws of this State, and corporate attorneys in fact for reciprocal or inter-insurance exchanges, (e) railroad companies, (f) cemetery companies, . . . (i) abstract and title insurance companies whose purposes are provided for and whose powers are prescribed by Chapter 9 of the Insurance Code of this State.

TLLCA 2.01.B

B. A limited liability company engaging in a business that is subject to regulation by another Texas statute may be formed under this Act only if it is not prohibited by the other statute. The limited liability company is subject to all limitations of the other statute.

TNPCA 2.01.B(1), (2) & (4)

B. This Act shall not apply to any corporation, nor may any corporation be organized under this Act or obtain authority to conduct its affairs in this State under this Act:

(1) If any one or more of its purposes for the conduct of its affairs in this State is expressly forbidden by any law of this State.

(2) If any one or more of its purposes for the conduct of its affairs in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such license cannot lawfully be granted to a corporation, except as provided by Subsection C.

* * *

(4) If any one or more of its purposes for the conduct of its affairs in this State is to operate a bank under the banking laws of this State or to operate an insurance company of any type or character that operates under the insurance laws of this State.

TRLPA 1.09(b)

(b) A limited partnership engaging in a business that is subject to regulation by another Texas statute may be formed under this Act only if it is not prohibited by the other statute. The limited partnership is subject to all limitations of the other statute.

Revisor's Note:

Section 2.003 is derived primarily from TBCA Article 2.01. Subsection 2.003(1) specifies general rules that are implicit under existing law applicable to all domestic entities under existing law, even though not explicit in the governing statute. Subsection 2.003(2) specifies the types of entities that must be formed under other Texas statutes and cannot be formed under the Code. Extending this list to all domestic entities is not intended as a substantive change because this limitation is implicit in existing Texas law even though not explicit in the existing statutes governing each type of domestic entity.

Revised Law:

Sec. 2.004. LIMITATION ON PURPOSES OF PROFESSIONAL ENTITY. Except as provided in Title 7, a professional entity may engage in only:

(1) one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and

(2) services ancillary to that type of professional service.

Source Law:

Texas Court's Opinion interpreting TPAA
Forrest N. Welmaker, Jr. v. The Honorable Henry Cuellar,
Secretary of State, 37 S.W.3d 550 (Tex.Civ.App.—Austin), pet.
denied, June 7, 2001.

TLLCA 11.01.A(2)

(2) Except as provided by Subdivisions (3) and (4) of this subsection, a professional limited liability company:

(a) may be organized under this Act only for the purpose of rendering one specific type of professional service and ancillary services; and

(b) may not render more than one kind of professional service.

TPCA 4(a) (third sentence)

Except as provided by subsection (b) of this section, no professional corporation organized under this Act shall render more than one kind of professional service.

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.

Revisor's Note:

Section 2.004 pulls together various statutory provisions in existing Texas law governing the purposes of professional entities, such as professional corporations, professional associations and professional limited liability companies. Section 2.004 allows a professional entity to provide more than one professional service as its purpose if permitted by the Texas law regulating the professional services. Existing Texas organizational statutes governing professional entities are unduly rigid. Unlike the TLLCA or TPCA, the TPAA is ambiguous on its face with respect to how many professional services may be rendered but has recently been interpreted by a Texas court to limit the number of professional services to one. The revised law changes this rule to provide more flexibility by deferring to the regulatory law governing the profession. The necessity for a single professional service limitation should be the subject of the special regulatory law governing the profession and not the organizational law.

Revised Law:

Sec. 2.005. LIMITATION IN GOVERNING DOCUMENTS. The governing documents of a domestic entity may contain limitations on the entity's purposes.

Source Law:

TLLCA 2.01.A

Art. 2.01. A. A limited liability company formed under this Act may engage in any lawful business unless a more limited purpose is stated in its articles of organization or regulations.

TRLPA 1.09(a)

Sec. 1.09. (a) A limited partnership formed under this Act may engage in any lawful business unless a more limited purpose is stated in its partnership agreement.

Revisor's Note:

No substantive change is intended. Section 2.005 states what is implicit in existing Texas law governing all entities, namely that the governing documents of the entity may limit its purposes. This statement was not explicit in some existing Texas statutes.

Revised Law:

Sec. 2.006. PERMISSIBLE PURPOSE OF FOR-PROFIT CORPORATION RELATED TO RAILROADS. Notwithstanding Section 2.003(2)(E), a for-profit corporation may:

- (1) construct, acquire, maintain, and operate street railways, suburban railways, and belt lines of railways in or near municipalities to transport freight and passengers;
- (2) construct, own, and operate union depots;
- (3) buy, sell, and convey rights-of-way on which to construct railroads;
- (4) construct, acquire, maintain, and operate lines of electric, gas, or gasoline, denatured alcohol, or naphtha motor railways in and between municipalities, and interurban railways in and between municipalities in this state to transport freight or passengers;
- (5) build, maintain, and operate a line of railroads to mines, gins, quarries, manufacturing plants, or mills;
- (6) construct, maintain, and operate terminal railways; or
- (7) operate a railroad passenger service by contracting with a railroad corporation or other company that does not construct, own, or maintain a railroad track.

Source Law:

TBCA 2.01.C

C. A company may be incorporated under this Article or under Chapter 1, Title 112, Revised Statutes, [Vernon's Ann. Civ. St. art. 6259 et seq.] if the company:

- (1) operates a railroad passenger service by contracting with a railroad corporation or other company; and
- (2) does not construct, own, or maintain a railroad track.

TMCLA 1302-3.05

Art. 1302-3.05. Certain Railroads

A. Corporations for profit may be organized for the following purposes:

(1) To construct or acquire with power to maintain and operate street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots, and to buy, sell and convey right-of-way upon which to construct railroads.

(2) To construct, acquire, maintain and operate lines of electric, gas, or gasoline, denatured alcohol, or naphtha motor railways within and between any cities or towns, and any interurban railways within and between cities and towns, in this State, for the transportation of freight or passengers, or both.

(3) To build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, or mills.

(4) The construction, operation and maintenance of terminal railways.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.007. ADDITIONAL PROHIBITED ACTIVITIES OF FOR-PROFIT CORPORATION. A for-profit corporation may not:

(1) operate a cooperative association, limited cooperative association, or labor union;

(2) transact a combination of the businesses of:

(A) raising cattle and owning land for the raising of cattle, other than operating and owning feedlots and feeding cattle; and

(B) operating stockyards and slaughtering, refrigerating, canning, curing, or packing meat; or

(3) engage in a combination of:

(A) the petroleum oil producing business in this state; and

(B) the oil pipeline business in this state other than through stock ownership in a for-profit corporation engaged in the oil pipeline business and other than the ownership or operation of private pipelines in and about the corporation's refineries, fields, or stations.

Source Law:

TBCA 2.01.B(3) & (4)

(3) If among its purposes for the transaction of business in this State, there is included, however worded, a combination of the two businesses listed in either of the following:

(a) The business of raising cattle and owning land therefor, and the business of operating stockyards and of slaughtering, refrigerating, canning, curing or packing meat. Owning and operating feed lots and feeding cattle shall not be considered as engaging in "the business of raising cattle and owning land therefor" within the purview of this paragraph of this subsection.

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be deemed to be engaging directly in the oil pipe line business in this State;

(4) If any one or more of its purposes is to operate any of the following:

* * *

(g) cooperatives or limited cooperative associations, (h) labor unions,

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.008. NONPROFIT CORPORATIONS. A corporation formed for the purpose of operating a nonprofit institution, including an institution devoted to a charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purpose, may be formed and governed only as a nonprofit corporation under this code and not as a for-profit corporation under this code.

Source Law:

TBCA 2.01.A

A. . . . Corporations for the purpose of operating non-profit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, may not adopt or be organized under this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.009. PERMISSIBLE PURPOSE OF NONPROFIT CORPORATION RELATED TO ORGANIZED LABOR. Subject to Chapter 101, Labor Code, a nonprofit corporation may be formed to organize laborers, workers, or wage earners to protect themselves in their various pursuits.

Source Law:

TNPCA 2.01.A (last sentence)

Subject to the provisions of Chapter 2, Title 83, of the Revised Civil Statutes of Texas, 1925, [Vernon's Ann.Civ.St. art. 5152 et seq., repealed; see, now, V.T.C.A., Labor Code § 101.001 et seq.] and of such Chapter or any part thereof as it may hereafter be amended, a corporation may be organized under this Act if any one or more of its purposes for the conduct of its affairs in this State is to organize laborers, working men, or wage earners to protect themselves in their various pursuits.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.010. PROHIBITED ACTIVITIES OF NONPROFIT CORPORATION. A nonprofit corporation may not be organized or registered under this code to conduct its affairs in this state to:

(1) engage in or operate as a group hospital service, rural credit union, agricultural and livestock pool, mutual loan corporation, cooperative association under Chapter 251, cooperative credit association, farmers' cooperative society, Co-operative Marketing Act corporation, rural electric cooperative corporation, telephone cooperative corporation, or fraternal organization operating under the lodge system and incorporated under Subchapter C, Chapter 23; or

(2) engage in water supply or sewer service as an entity incorporated under Chapter 67, Water Code.

Source Law:

TNPCA 2.01.B(3), (5)

(3) If any one or more of its purposes for the conduct of its affairs in this State is to organize Group Hospital Service, Rural Credit Unions, Agricultural and Livestock Pools, Mutual Loan Corporations, Co-operative Credit Associations, Farmers' Co-operative Societies, Co-operative Marketing Act Corporations, Rural Electric Co-operative Corporations, Telephone Co-operative Corporations, or fraternal organizations operating under the lodge system and heretofore or hereafter

incorporated under Articles 1399 through 1407, both inclusive, of Revised Civil Statutes of Texas, 1925.

* * *

(5) If any one or more of its purposes for the conduct of its affairs in this State is to engage in water or sewer service and it has heretofore or is hereafter incorporated under the Acts of 1933, Forty-third Legislature, First Called Session, Chapter 76, as amended, Acts of 1941, Forty-seventh Legislature, page 666, Chapter 407, being presently identified as Article 1434(a), Revised Civil Statutes of Texas, 1925.

Revisor's Note:

The revised law contains updated cross-references to the provisions of existing Texas law referenced by this section. The revised law also cross-references to the provisions governing fraternal lodges under subchapter C, Chapter 23 of the Code.

Revised Law:

Sec. 2.011. PURPOSES OF COOPERATIVE ASSOCIATION. (a) A person may organize a cooperative association under this code to acquire, produce, build, operate, manufacture, furnish, exchange, or distribute any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the cooperative association.

(b) A cooperative association may not be organized to:

- (1) serve or function as a health maintenance organization;
- (2) furnish medical or health care; or
- (3) employ or contract with a health care provider in a manner prohibited by the statute under which the provider is licensed.

(c) A cooperative association may not directly or indirectly engage in a health maintenance organization or a prepaid legal service corporation.

Source Law:

CAA 5

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

CAA 6(4)

(4) not engage, either directly or indirectly, in . . . health maintenance organizations, or prepaid legal service corporations; and

CAA 26(b)(2)

(b) . . .

- (2) the entities are not organizing to:
 - (A) serve or function as a health maintenance organization;
 - (B) provide medical or health care; or
 - (C) employ or contract with a medical or health care provider in a manner that is prohibited by a licensing law of this state under which that medical or health care provider is licensed.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.012. LIMITATION ON PURPOSES OF REAL ESTATE INVESTMENT TRUST. The purposes of a real estate investment trust are limited by Section 3.012.

Source Law:

TREITA 3.10(A)(2)

Sec. 3.10. (A) One or more persons, may act as trust manager(s) of a real estate investment trust by subscribing and acknowledging to a declaration of trust before an officer duly authorized to take acknowledgments of deeds, which shall set forth:

* * *

(2) A statement that it is formed pursuant to the provisions of this Act and has the following as its purpose: To purchase, hold, lease, manage, sell, exchange, develop, subdivide and improve real property and interests in real property, and in general, to carry on any other business and do any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Texas upon real estate investment trusts formed under the Texas Real Estate Investment Trust Act, and to do any or all of the things hereinafter set forth to the same extent as natural persons might or could do. The term "real property" and the term "interests in real property" for the purposes stated herein shall not include severed mineral, oil or gas royalty interests.

Revisor's Note:

This section adds a cross-reference to the purposes limitations required in the certificate of formation of a real estate investment trust and contained in Section 3.012.

(Sections 2.013-2.100 reserved for expansion)

SUBCHAPTER B. POWERS OF DOMESTIC ENTITY

Revised Law:

Sec. 2.101. GENERAL POWERS. Except as otherwise provided by this code, a domestic entity has the same powers as an individual to take action necessary or convenient to carry out its business and affairs. Except as otherwise provided by this code, the powers of a domestic entity include the power to:

- (1) sue, be sued, and defend suit in the entity's business name;
- (2) have and alter a seal and use the seal or a facsimile of it by impressing, affixing, or reproducing it;
- (3) acquire, receive, own, hold, improve, use, and deal in and with property or an interest in property;
- (4) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of property;
- (5) make contracts and guarantees;
- (6) incur liabilities, borrow money, issue notes, bonds, or other obligations, which may be convertible into, or include the option to purchase, other securities or ownership interests in the entity, and secure its obligations by mortgaging or pledging its property, franchises, or income;
- (7) lend money, invest its funds, and receive and hold property as security for repayment;
- (8) acquire its own bonds, debentures, or other evidences of indebtedness or obligations;
- (9) acquire its own ownership interests, regardless of whether redeemable, and hold the ownership interests as treasury ownership interests or cancel or dispose of the ownership interests;
- (10) be a promoter, organizer, owner, partner, member, associate, or manager of an organization;
- (11) acquire, receive, own, hold, vote, use, pledge, and dispose of ownership interests in or securities issued by another person;
- (12) conduct its business, locate its offices, and exercise the powers granted by this code to further its purposes, in or out of this state;
- (13) lend money to, and otherwise assist, its managerial officials, owners, members, or employees if the loan or assistance reasonably may be expected to benefit, directly or indirectly, the entity;
- (14) elect or appoint officers and agents of the entity, establish the length of their terms, define their duties, and fix their compensation;

(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and incentive plans for managerial officials, owners, members, or employees or former managerial officials, owners, members, or employees;

(16) indemnify and maintain liability insurance for managerial officials, owners, members, employees, and agents of the entity or the entity's affiliate;

(17) adopt and amend governing documents for managing the affairs of the entity subject to applicable law;

(18) make donations for the public welfare or for a charitable, scientific, or educational purpose;

(19) voluntarily wind up its business and activities and terminate its existence;

(20) transact business or take action that will aid governmental policy; and

(21) take other action necessary or appropriate to further the purposes of the entity.

Source Law:

TBCA 2.02A(2)-(20)

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

* * *

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, officers, and directors if such a loan or assistance reasonably may be expected to benefit, directly or indirectly, the lending or assisting corporation.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; to purchase or otherwise acquire its own unredeemable shares and hold those acquired shares as treasury shares or cancel or otherwise dispose of those acquired shares; and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(10) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

(12) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation.

(13) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify directors, officers, employees, and agents of the corporation and to purchase and maintain liability insurance for those persons.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for any or all of, or any class or classes of, its directors, officers, or employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction to be an incorporator of any other corporation of any type or kind.

(19) To cease its corporate activities and terminate its existence by voluntary dissolution.

(20) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

TLLCA 2.02.A

Art. 2.02. A. Each limited liability company shall have the power provided for a corporation under the TBCA and a limited partnership under the Texas Revised Limited Partnership Act.

TLLCA 2.11.A

Art. 2.11. A. Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance may be made, in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of the property of the limited liability company shall be valid and binding upon the company, if they are executed by one or more persons as provided in Article 2.21 of this Act.

TNPCA 2.02.A(2)-(5), (7)-(15), (17)

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

* * *

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

* * *

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with,

shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

* * *

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

TPAA 5

Sec. 5. (A) Property. A professional association may in its own name invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, and may own real or personal property necessary or appropriate for rendering its professional service. Any investment or property so owned may be transferred in the association name by action of the Board of Directors or Executive Committee.

(B) Suits. An association shall have power to sue and be sued, complain and defend in its association name.

TREITA 6.10(A)

Sec. 6.10. (A) Subject to the provisions of paragraphs (B) and (C) of this Section, each real estate investment trust shall have power:

(1) To have perpetual succession by its trust name unless a limited period of duration is stated in its declaration of trust.

(2) To sue and be sued, complain and defend, in its trust name.

(3) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property or any interest therein, wherever situated, as the purposes of the real estate investment trust shall require.

(4) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(5) To lend money to, and otherwise assist, the employees, officers, and trust managers of the real estate investment trust if the loan or assistance may reasonably be expected to benefit, directly or indirectly, the lending or assisting real estate investment trust.

(6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, securities, shares or other interests in, or obligations of, domestic or foreign corporations, associations, partnerships, other real estate investment trusts, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(7) To purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; to purchase or otherwise acquire its own unredeemable shares and hold those acquired shares as treasury shares or cancel or otherwise dispose of those acquired shares; and to redeem or purchase shares made redeemable by the provisions of its declaration of trust.

(8) To make contracts, and incur liabilities, borrow money at such rates of interest as the trust may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its trust purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the trust for such period of time as the real estate investment trust may determine, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its declaration of trust or with the laws of this state, for the administration and regulation of the affairs of the real estate investment trust.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(14) To transact any lawful business that the trust managers find will aid government policy.

(15) To indemnify trust managers, officers, employees, and agents of the real estate investment trust and to purchase and maintain liability insurance for those persons.

(16) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock option plans, stock bonus plans, and other incentive plans for any or all of, or any class or classes of, its trust managers, officers, or employees.

(17) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction, to be an incorporator of any other corporation of any type or kind.

(18) To cease its trust activities and terminate its existence by voluntary dissolution.

(19) To engage in activities that are mandated or authorized by sections of the Internal Revenue Code of 1986, or any successor statute, that relate to or govern real estate investment trusts or the regulations adopted under that law.

(20) Whether included in the foregoing or not, to have and exercise, all powers necessary or appropriate to effect any or all of the purposes for which the real estate investment trust is organized.

TRPA 3.01

Art. 6132b-3.01. General Powers of Partnership

Unless restricted by applicable law, a partnership has the same powers as an individual or corporation to do all things

necessary or convenient to carry out its business and affairs, including the power to:

- (1) sue and be sued, complain, and defend in its partnership name;
- (2) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (3) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (4) purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (5) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the partnership, and secure its obligations by mortgage or pledge of its property, franchises, or income;
- (6) lend money, invest, and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (7) be a promoter, partner, member, associate, or manager of a partnership, joint venture, trust, or other entity;
- (8) conduct its business, locate offices, and exercise the powers granted by this Act within or outside this state;
- (9) appoint employees and agents of the partnership, define their duties, fix their compensation, and lend them money or credit;
- (10) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former partners, employees, and agents;
- (11) make donations for the public welfare or for charitable, scientific, or educational purposes;
- (12) transact any lawful business that will aid governmental policy;
- (13) make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the partnership;
- (14) enter into mergers and similar transactions to the extent permitted by applicable law;

(15) indemnify a person who was, is, or is threatened to be made a defendant or respondent in a proceeding and purchase and maintain liability insurance for the person; and

* * *

TRPA 3.05(a)

(a) Partnership as Party. A partnership may sue and be sued in the name of the partnership.

Revisor's Note:

The concept of perpetual existence of a corporation was a relatively new concept in 1955 when the TBCA was adopted. However, that concept is now ingrained in corporate law. Accordingly, the provisions empowering corporations to have perpetual existence found in TBCA Art. 2.02.A(1) and TNPCA Art. 2.02.A(1) are no longer necessary and have been omitted.

Under the modern entity theory accepted in most U.S. jurisdictions, including Texas, an entity has the same powers as an individual except as limited by law. This concept is explicit in the TRPA but implicit in the other source law through the lengthy list of powers and applicable jurisprudence. The first sentence of the revised law recognizes the modern entity theory. The source laws governing most kinds of domestic entities have similar provisions either explicitly in the statutes currently governing those entities or incorporated by reference into such statutes. For example, although the source law governing lodges, which was originally adopted in 1899, does not have a similar broad statement of powers, these powers are incorporated into the law governing lodges by virtue of TMCLA Article 1302-1.03.A which specifies that all corporations organized not for profit are also governed by the TNPCA to the extent not inconsistent with the special statute pertaining to the lodge corporations. One type of entity that does not explicitly or by incorporation have a similar lengthy enumeration of powers is the nonprofit association governed by TUUNAA. By virtue of Section 252.017 of the revised law, Chapter 2 does not apply to nonprofit associations.

Revised Law:

Sec. 2.102. ADDITIONAL POWERS OF NONPROFIT ENTITY OR INSTITUTION. To effect its purposes, a domestic nonprofit entity or institution formed for a religious, charitable, educational, or eleemosynary purpose may acquire, own, hold, mortgage, and dispose of and invest its funds in property for the use and benefit of, under the discretion of, and in trust for a convention, conference, or association organized under the laws of this state or another state with which it is affiliated or by which it is controlled.

Source Law:

TNPCA 2.02.A(16)

(16) Any religious, charitable, educational, or eleemosynary institution organized under the laws of this State may acquire,

own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

Revisor's Note:

The revised law permits nonprofit status in limited liability companies in addition to corporations, cooperative associations and associations. The revised law is derived from the special power provision contained in the TNPCA and is extended to nonprofit limited liability companies.

Revised Law:

Sec. 2.103. POWER TO INCUR INDEBTEDNESS. (a) Unless otherwise provided by its governing documents or this code, a domestic entity may create indebtedness for any consideration the entity considers appropriate, including:

- (1) cash;
- (2) property;
- (3) a contract to receive property;
- (4) a debt or other obligation of the entity or of another person;
- (5) services performed or a contract for services to be performed; or
- (6) a direct or indirect benefit realized by the entity.

(b) In the absence of fraud in the transaction, the judgment of the governing authority of a domestic entity as to the value of the consideration received by the entity for indebtedness is conclusive.

(c) The consideration for the indebtedness may be received either directly or indirectly by the domestic entity, including by a domestic or foreign organization that is wholly or partially owned, directly or indirectly, by the domestic entity.

(d) This section does not apply to indebtedness created by a domestic entity that is incurred by reason of the authorization or payment of a distribution.

Source Law:

TLLCA 8.12.B
B. Subject to Section C of this Article, Articles 2.03 through 2.06, 2.09, 2.09A, 3.01, 7.01 through 7.05, and 7.07, Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq.,

Vernon's Texas Civil Statutes), as amended, apply to a limited liability company and its members, managers, and officers.

TMCLA 1302-2.06.A

A. A corporation may incur indebtedness for such consideration as it may deem appropriate, including, without limitation, cash, real property, personal property, intangible property, contracts to receive real, personal, or intangible property, debt and other obligations of the corporation or any other domestic or foreign corporation, person, or other entity, services performed, contracts for services to be performed, debt or equity securities of the corporation or of any other domestic or foreign corporation, person, or other entity, and any direct or indirect benefit realized by the corporation. Such consideration may be received either directly or indirectly, including by direct or indirect wholly owned or partially owned domestic or foreign corporations or other entities. In addition, a corporation may issue and incur indebtedness without the receipt of any consideration by reason of the authorization or payment of a distribution. In the absence of fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value, type, and sufficiency of the consideration received for any such indebtedness shall be conclusive.

Revisor's Note:

The revised law expands upon the power to incur liabilities set forth in Section 2.101(6). The need for this expansion is essentially historical. The common law of corporations placed limits on the power of a corporation to incur debts. This common law concept has become antiquated in modern times as corporations have been accepted as separate entities with full legal capacity in all respects. Explicit or implicit in the source law for all domestic entities is the power to incur indebtedness. The explicit power to incur indebtedness found in Section 2.103, which is derived from TMCLA Article 1302-2.06, confirms such power of domestic entities.

Subsection (d) clarifies that this section does not apply to distributions by a domestic entity. The source law appears to authorize distributions by corporations, when the TBCA and TNPCA strictly regulate the authority of a board of directors to authorize a distribution. The revised law eliminates this conflict and defers to other portions of the Code the authority for and limitations on distributions by domestic entities.

Revised Law:

Sec. 2.104. POWER TO MAKE GUARANTIES. (a) In this section, "guaranty" means a mortgage, pledge, security agreement, or other agreement making the domestic entity or its assets secondarily liable for another person's contract, security, or other obligation.

(b) Unless otherwise provided by its governing documents or this code, a domestic entity may:

(1) make a guaranty on behalf of a parent, subsidiary, or affiliate of the entity; or

(2) make a guaranty of the indebtedness of another person if the guaranty may reasonably be expected directly or indirectly to benefit the entity.

(c) For purposes of Subsection (b)(2), a decision by the governing authority of the domestic entity that a guaranty may reasonably be expected to benefit the entity is conclusive and not subject to attack by any person, except:

(1) a guaranty may not be enforced by a person who participated in a fraud on the domestic entity resulting in the making of the guaranty or by a person who had notice of that fraud at the time the person acquired rights under the guaranty;

(2) a proposed guaranty may be enjoined at the request of an owner of the domestic entity on the ground that the guaranty cannot reasonably be expected to benefit the domestic entity; or

(3) the domestic entity, whether acting directly or through a receiver, trustee, or other legal representative, or through an owner on behalf of the domestic entity, may bring suit for damages against the managerial officials, owners, or members who authorized the guaranty on the ground that the guaranty could not reasonably be expected to benefit the domestic entity.

(d) This section does not:

(1) apply to a domestic entity governed by the Insurance Code; or

(2) authorize a domestic entity that is not governed by the Insurance Code to engage in a business or transaction regulated by the Insurance Code.

Source Law:

TLLCA 8.12.B

B. Subject to Section C of this Article, Articles 2.03 through 2.06, 2.09, 2.09A, 3.01, 7.01 through 7.05, and 7.07, Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), as amended, apply to a limited liability company and its members, managers, and officers.

TMCLA 1302-2.06B, C & D

B. Any corporation shall have the power and authority to make a guaranty if the guaranty reasonably may be expected to benefit, directly or indirectly, the guarantor corporation. For purposes of this section, "guaranty" means a guaranty, mortgage, pledge, security agreement, or other agreement making the guarantor corporation or its assets responsible respecting the contracts, securities, or other obligations of any person (including, but not limited to, any domestic or foreign corporation, person, or other entity, or any officer, director, or employee of such guarantor corporation). The decision of, or

a decision made pursuant to authority granted by, the Board of Directors that the guaranty may reasonably be expected to benefit, directly or indirectly, the guarantor corporation shall be binding upon the guarantor corporation, and no guaranty made by a corporation in accordance with the provisions of this Section B shall be invalid or unenforceable as against such corporation, unless such guaranty is sought to be enforced by a person who participated in a fraud on the guarantor corporation resulting in the making of the guaranty or by a person who had notice of such fraud before he acquired his rights under the guaranty. Nothing herein contained shall prevent a suit (1) prior to the making of a guaranty by a corporation, by a shareholder in a representative suit against the guarantor corporation, to enjoin the making of such guaranty on the ground that such guaranty could not reasonably be expected to benefit, directly or indirectly, the guarantor corporation, or (2) after the making of a guaranty by a corporation, by the guarantor corporation, whether acting directly or through a receiver, trustee, or other legal representative or through a shareholder in a representative suit, against the directors who voted for or assented to the making of such guaranty for damages or other appropriate relief on the ground that such guaranty could not reasonably have been expected to benefit, directly or indirectly, the guarantor corporation, but such directors shall be entitled to assert any defenses which they may have under law.

C. A guaranty will be considered to benefit a guarantor corporation for purposes of Section B of this Article if the guaranty is of a contract, security, or other obligation of a subsidiary or an affiliated corporation or other entity. For the purposes of this section only:

(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 ;

(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

(3) "affiliated corporation or other entity" means a domestic or foreign corporation or other entity, 50 percent or more of the outstanding shares or other ownership interest of which is owned at the time of the action:

- (a) by the parent of the guarantor corporation;
- (b) by one or more of the parent's subsidiaries; or
- (c) by the parent and one or more of its subsidiaries.

D. Nothing contained in this Article is intended or shall be construed to limit or deny to any corporation the right or power to do or perform any act which it is or may be empowered or authorized to do or perform under any other laws of the State of Texas now in force or hereafter enacted. Provided, however, Sections B and C of this Article shall not apply to nor enlarge the powers of any corporation that does business pursuant to any provision of the Insurance Code of Texas, whether licensed in Texas or not, nor shall those sections allow or permit any corporation, not licensed under the Insurance Code of Texas, to engage in any character, type, class, or kind of fidelity, surety, or guaranty business or transaction subject to regulation under the Insurance Code.

Revisor's Note:

The revised law expands upon the power to incur liabilities set forth in Section 2.101(6). The need for this expansion is essentially historical. The common law of corporations placed limits on the power of a corporation to make guarantees. This common law concept has become antiquated in modern times as corporations have been accepted as separate entities with full capacity in all respects. Explicit or implicit in the source law for all domestic entities is the power to make guarantees. The explicit power to make guarantees found in Section 2.104, which is derived from TMCLA Article 1302-2.06, confirms such power of domestic entities.

Revised Law:

Sec. 2.105. ADDITIONAL POWERS OF CERTAIN PIPELINE BUSINESSES. In addition to the powers provided by the other sections of this subchapter, a corporation, general partnership, limited partnership, limited liability company, or other combination of those entities engaged as a common carrier in the pipeline business for the purpose of transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions has all the rights and powers conferred on a common carrier by Sections 111.019-111.022, Natural Resources Code.

Source Law:

TBCA 2.01.B(3)(b)

(b) . . . and provided that any corporation, or group of corporations acting in partnership or other combination with other corporations, engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, carbon

dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code.

TLLCA 2.02.D

D. A limited liability company engaged as a common carrier in the pipeline business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions has all of the rights and powers conferred by Sections 111.019-111.022, Natural Resources Code.

TRLPA 1.09(c)

(c) A limited partnership engaged as a common carrier in the pipeline business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions has all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code. A limited partnership that is a common carrier as defined in Section 111.002, Natural Resources Code, has in addition all of the obligations conferred by Sections 111.001 through 111.025, Natural Resources Code.

TRPA 3.01(16)

(16) exercise all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code, and their subsequent amendments, if the partnership is engaged as a common carrier in the pipeline business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.106. POWER OF NONPROFIT CORPORATION TO SERVE AS TRUSTEE. (a) A nonprofit corporation that is described by Section 501(c)(3) or 170(c), Internal Revenue Code, or a corresponding provision of a subsequent federal tax law, or a nonprofit corporation listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, or any successor I.R.S. publication, may serve as the trustee of a trust:

(1) of which the nonprofit corporation is a beneficiary; or

(2) benefiting another organization described by one of those sections of the Internal Revenue Code, or a corresponding provision of a subsequent federal tax law, or listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, or any successor I.R.S. publication.

(b) Any corporation (or person or entity assisting such corporation) described in this section shall have immunity from suit (including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial) as to any claim alleging that the corporation's role as trustee of a trust described in this section constitutes engaging in the trust business in a manner requiring a state charter as defined in Section 181.002(a)(9), Finance Code. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this subsection.

Source Law:

TNPCA 2.31

Art. 1396-2.31. Power to Serve as Trustee

A. A corporation that is described by Section 501(c)(3) or 170(c), Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or a corporation listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, may serve as the trustee of a trust:

(1) of which the corporation is a beneficiary; or

(2) benefitting another organization described by one of those sections of the Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78.

B. Any corporation (or person or entity assisting such corporation) described in this article shall have immunity from suit (including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial) as to any claim alleging that the corporation's role as trustee of a trust described in this article constitutes engaging in the trust business in a manner requiring a state charter as defined in Section 1.002(a)(9), Texas Trust Company Act (Article 342a-1.002, Vernon's Texas Civil Statutes). An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this subsection.

Revisor's Note:

No substantive change is intended. The revised law has been updated to reflect the correct cross-reference to Texas statute in subsection (b).

Revised Law:

Sec. 2.107. STANDARD TAX PROVISIONS FOR CERTAIN CHARITABLE NONPROFIT CORPORATIONS; POWER TO EXCLUDE. (a) Notwithstanding any conflicting provision of this chapter, Chapter 3, or the certificate of formation and except as provided by Subsection (b), the certificate of formation of each

corporation that is a private foundation as defined by Section 509, Internal Revenue Code, is considered to contain the following provisions: "The corporation shall make distributions at the time and in the manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1986; the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code; and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code."

(b) A nonprofit corporation described by Subsection (a) may amend the certificate of formation of the corporation to expressly exclude the application of Subsection (a).

Source Law:

TNPCA 2.27.A & B

A. Notwithstanding any provision in this Act or in the articles of incorporation to the contrary (except as provided in Section B), the articles of incorporation of each corporation which is a private foundation described in Section 509 of the Internal Revenue Code of 1986 [26 U.S.C.A. § 509.] shall be deemed to contain the following provisions: "The corporation shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1986; [26 U.S.C.A. § 4942.] the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; [26 U.S.C.A. § 4941.] the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; [26 U.S.C.A. § 4943.] the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code; [26 U.S.C.A. § 4944.] and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code." [26 U.S.C.A. § 4945.] With respect to any such corporation organized prior to January 1, 1970, this Section A shall apply only for its taxable years beginning on or after January 1, 1972.

B. The articles of incorporation of any corporation described in Section A may be amended to expressly exclude the application of Section A, and in the event of such amendment, Section A shall not apply to such corporation.

Revisor's Note:

No substantive change is intended. The revised law omits the last sentence of TNPCA Article 2.27.A as unnecessary.

Revised Law:

Sec. 2.108. POWERS OF PROFESSIONAL ASSOCIATION. Except as provided by Title 7, a professional association has the same powers, privileges, duties, restrictions, and liabilities as a for-profit corporation.

Source Law:

TPAA 25

Sec. 25. . . . and professional associations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of business corporations except insofar as the same may be limited or enlarged by this Act.

. . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.109. POWERS OF PROFESSIONAL CORPORATION. Except as provided by Title 7, a professional corporation has the same powers, privileges, duties, restrictions, and liabilities as a for-profit corporation.

Source Law:

TPCA 5

Sec. 5. . . . professional corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other business corporations except insofar as the same may be limited or enlarged by this Act. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.110. POWERS OF COOPERATIVE ASSOCIATION. (a) Except as provided by Chapter 251, a cooperative association may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as a nonprofit corporation.

(b) A cooperative association may:

- (1) own and hold membership in other associations or corporations;
- (2) own and hold share capital of other associations or corporations;
- (3) own and exercise ownership rights in bonds or other obligations;
- (4) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, or other nonprofit groups; and
- (5) deliver money to a scholarship fund for rural students.

Source Law:

CAA 6

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

* * *

(5) deliver money to a scholarship fund for rural students.

Revisor's Note:

No substantive change is intended. Subsection (a) of the revised law is drafted to parallel the provisions of Sections 2.108 and 2.109. As such, the language contains additional provisions that a cooperative association is subject to the same duties, restrictions and liabilities as a nonprofit corporation. This expanded language does not represent a substantive change because the CAA Section 3 incorporates by reference the provisions of the TNPCA to the extent such provisions are not inconsistent with any other provisions of the CAA.

Revised Law:

Sec. 2.111. LIMITATION ON POWERS OF COOPERATIVE ASSOCIATION. Except for the payment of necessary legal fees or promotion expenses, a cooperative association may not directly or indirectly use its funds, issue shares, or incur indebtedness for the payment of compensation for the organization of the cooperative association in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

Source Law:

CAA 40(a)

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 2.112. STATED POWERS IN SUBCHAPTER SUFFICIENT. A domestic entity is not required to state any of the powers provided to the entity by this subchapter in its governing documents.

Source Law:

TBCA 3.02.B

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

TLLCA 3.02.B

B. It shall not be necessary to set forth in the articles of organization any of the company powers enumerated in this Act.

TNPCA 3.02.C

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

Revisor's Note:

The revised law is derived from source law governing corporations and limited liability companies. The same concept set forth in the revised law is implied in existing Texas statutes governing other entities because the requirements for the contents of the governing documents of the entity do not require a statement of the powers of the entity. Accordingly, these statutes are interpreted not to require such statement of powers. The revised law, therefore, does not represent a substantive change for these other domestic entities.

Revised Law:

Sec. 2.113. LIMITATION ON POWERS. (a) This subchapter does not authorize a domestic entity or a managerial official of a domestic entity to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the entity contained in its governing documents, this code, or other law of this state.

(b) This code does not authorize any action in violation of the antitrust laws of this state.

Source Law:

TBCA 2.02.B & C

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provision of this Article.

C. Nothing contained in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State, as now existing or hereafter amended.

TLLCA 2.02.B & C

B. Nothing in this Article grants any authority to managers or members of a limited liability company for the exercise of the powers of a limited liability company, inconsistent with limitations on any of the same which may be expressly set forth in this Act or any articles of organization or regulations or in any laws of this State. Authority of managers and members to act beyond the scope of the purpose or purposes of a limited liability company is not granted by any provision of this Act.

C. Nothing contained in this Act shall be deemed to authorize any action in violation of the Anti-Trust laws of this State, as now existing or hereafter amended.

TNPCA 2.02.B & C

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or by-laws or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this Article.

C. Nothing in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925, as now existing or hereafter amended. [Vernon's Ann.Civ.St. arts. 1359 to 1365 (repealed).]

TREITA 6.10(B) & (C)

(B) Nothing in this Section grants any authority to officers or trust manager(s) of a real estate investment trust to perform any of the foregoing powers inconsistent with the limitations on any of the same which may be expressly set forth in this Act or in the declaration of trust or in any other laws of this state. Authority of officers and trust manager(s) to act beyond the scope of the purpose or purposes of a real estate investment trust is not granted by any provision of this Section.

(C) Nothing contained in this Act shall be deemed to authorize any action in violation of the antitrust laws of this state as now existing or hereafter amended.

Revisor's Note:

The revised law is derived from source law governing corporations, limited liability companies and REIT's. Existing Texas statutes governing other types of entities have not been read to express or imply an intent to allow violations of the state's antitrust laws or conduct inconsistent with a limitation on the purposes or powers of an entity. The revised

law, therefore, does not represent a substantive change for these other domestic entities.

Revised Law:

Sec. 2.114. CERTIFICATED INDEBTEDNESS; MANNER OF ISSUANCE; SIGNATURE AND SEAL. (a) Except as otherwise provided by the governing documents of the domestic entity, this code, or other law, on the issuance by a domestic entity of a bond, debenture, or other evidence of indebtedness in certificated form, the seal of the entity, if the entity has adopted a seal, may be a facsimile that may be engraved or printed on the certificate.

(b) Except as otherwise provided by the governing documents of the domestic entity, this code, or other law, if a security described by Subsection (a) is authenticated with the manual signature of an authorized officer of the domestic entity or an authorized officer or representative, to the extent permitted by law, of a transfer agent or trustee appointed or named by an indenture of trust or other agreement under which the security is issued, the signature of any officer of the domestic entity may be a facsimile signature.

(c) A security described by Subsection (a) that contains the manual or facsimile signature of a person who is no longer an officer when the security is delivered by the entity may be adopted, issued, and delivered by the entity in the same manner and to the same extent as if the person had remained an officer of the entity.

Source Law:

TLLCA 8.12.B

B. Subject to Section C of this Article, Articles 2.03 through 2.06, 2.09, 2.09A, 3.01, 7.01 through 7.05, and 7.07, Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), as amended, apply to a limited liability company and its members, managers, and officers.

TMCLA 1302-2.05

Art. 1302-2.05. Bonds, Debentures and Other Evidence of Indebtedness; Manner of Issuance; Facsimile Signatures and Seal

A. Where any private corporation organized under the laws of this State hereafter issues any bond, debenture, or other evidence of indebtedness, the seal of the corporation thereon may be facsimile, engraved, or printed, and where any such bond, debenture, or other evidence of indebtedness is authenticated with the manual signature of any authorized officer of the corporation or other trustee appointed or named by an indenture of trust or other agreement under which such security is issued, the signature of any of the corporation's officers authorized to execute such security may be facsimile. In case any officer who signed, or whose facsimile signature has been used on any such bond, debenture, or other evidence of indebtedness shall cease to be an officer of the corporation for any reason before the same has been delivered by the corporation, such bond, debenture, or other evidence of indebtedness may nevertheless be adopted by the corporation and

issued and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

Revisor's Note:

The provisions of the revised law, which are derived from TMCLA Article 1302-2.05, apply to certificated bonds, debentures and other evidences of indebtedness of all domestic entities. The source law applies only to corporations and limited liability companies. This section codifies existing legal practices for the affected domestic entities and represents a reasonable standardization of the law in this area. By authorizing facsimile signatures from former officers to be enforceable on such certificates, this provision permits transfer agents for all types of domestic entities to continue to use preprinted certificate forms despite a change in officers.