

CHAPTER 7. LIABILITY

Revised Law:

Sec. 7.001. LIMITATION OF LIABILITY OF GOVERNING PERSON. (a) Subsections (b) and (c) apply to:

(1) a domestic entity other than a partnership or limited liability company;

(2) an other organization incorporated or organized under another law of this state; and

(3) to the extent permitted by federal law, a federally chartered bank, savings and loan association, or credit union.

(b) The certificate of formation or similar instrument of an organization to which this section applies may provide that a governing person of the organization is not liable, or is liable only to the extent provided by the certificate of formation or similar instrument, to the organization or its owners or members for monetary damages for an act or omission by the person in the person's capacity as a governing person.

(c) Subsection (b) does not authorize the elimination or limitation of the liability of a governing person to the extent the person is found liable under applicable law for:

(1) a breach of the person's duty of loyalty, if any, to the organization or its owners or members;

(2) an act or omission not in good faith that:

(A) constitutes a breach of duty of the person to the organization; or

(B) involves intentional misconduct or a knowing violation of law;

(3) a transaction from which the person received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the person's duties; or

(4) an act or omission for which the liability of a governing person is expressly provided by an applicable statute.

(d) The liability of a governing person may be limited or restricted:

(1) in a general partnership to the extent permitted under Chapter 152;

(2) in a limited partnership to the extent permitted under Chapter 153 and, to the extent applicable to limited partnerships, Chapter 152; and

(3) in a limited liability company to the extent permitted under Section 101.401.

Source Law:

TMCLA 1302-7.06

**Art. 1302-7.06. Limitation of Liability**

A. In this article:

(1) "Articles of incorporation" means the articles of incorporation or association of a corporation, the charter of a corporation, or any other document required to incorporate or organize a corporation under the laws of this state.

(2) "Corporation" means:

(a) Any corporation, association, or other organization incorporated or organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), Subtitle A, B, C, or D, Title 3, Finance Code, or a predecessor of that law, Chapter 181, Finance Code, or a predecessor of that law, the Insurance Code, Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes), Articles 1399 through 1407, Revised Statutes, Article 1448, Revised Statutes, [Repealed.] Section 2, Chapter 42, Acts of the 42nd Legislature, 3rd Called Session, 1932 (Article 1524c, Vernon's Texas Civil Statutes), the State Housing Law (Article 1528a, Vernon's Texas Civil Statutes), the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), the Automobile Club Services Act (Article 1528d, Vernon's Texas Civil Statutes), [Repealed; see, now, V.T.C.A., Transportation Code § 722.001 et seq.] the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), the Texas Mutual Trust Investment Company Act (Article 1528i, Vernon's Texas Civil Statutes), Chapter 221, Health and Safety Code, the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), [Repealed; see, now, V.T.C.A., Transportation Code § 431.001 et seq.] the Cultural Education Facilities Corporation Act (Article 1528m, Vernon's Texas Civil Statutes), Chapter 262, Health and Safety Code, Chapter 264, Health and Safety Code, Title 4, Agriculture Code, [V.T.C.A., Agriculture Code § 51.001 et seq.] Subchapter A, Chapter 301, Health and Safety Code, Subchapter B, Chapter 301, Health and Safety Code, [V.T.C.A., Health & Safety Code § 301.031 et seq.] or the Higher Education Authority Act, Chapter 53, Education Code, or Chapter 394, Local Government Code;

(b) Any corporation, association, or other organization incorporated or organized under the laws of this state that is governed in whole or in part by the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes); or

(c) To the extent permitted by federal law, any federally chartered bank, savings and loan association, or credit union.

(3) "Director" means an individual who is a director or trustee of a corporation.

B. The articles of incorporation of a corporation may provide that a director of the corporation shall not be liable, or shall be liable only to the extent provided in the articles of incorporation, to the corporation or its shareholders or members for monetary damages for an act or omission in the director's capacity as a director, except that this article does not authorize the elimination or limitation of the liability of a director to the extent the director is found liable for:

(1) a breach of the director's duty of loyalty to the corporation or its shareholders or members;

(2) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;

(3) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or

(4) an act or omission for which the liability of a director is expressly provided by an applicable statute.

Revisor's Note:

No substantive change is intended. Subsections (a) through (c) of Section 7.001 are based on TMCLA Article 1302-7.06. It permits domestic entities, other than partnerships or limited liability companies, and other organizations formed under other Texas laws to adopt provisions in their certificates of formation or similar instruments that generally exonerate or limit liability of a governing person for monetary damages to the organization, or its owners or members, for the governing person's acts or omissions in that capacity. The organization may not eliminate or limit such liability to the extent the person (1) has breached a duty of loyalty, (2) has taken action or omitted to act not in good faith in such a way that it breached some other duty owed to the entity or involved intentional misconduct or knowing violation of the law, (3) has received an improper benefit, or (4) is otherwise made liable by statute.

The scope of Subsections (a) through (c), like their predecessor Art. 1302-7.06 of the TMCLA, do not encompass partnerships and limited liability companies. The TLLCA, the TRPA and the TRLPA authorize limited liability companies and partnerships to modify the duties and liabilities of members, managers, and partners, subject to certain express limitations in the case of partnerships. The Code continues, in the provisions applicable to limited liability companies in Title 3

and partnerships in Title 4, the authorization given these entities to modify duties and liabilities in the governing documents of these entities. Subsection (d) adds a cross-reference to these other provisions.