

# Entities and Their Documentation

Presented by  
Fred Schraub  
Texas Underwriting Counsel  
Stewart Title Guaranty Company  
2008 Webinar Series

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## Domestic Entities

- Corporations
- Non-Profit Corporations
- Professional Corporations
- Cooperative Associations
- Unincorporated Non-Profit Associations
- Professional Associations
- Limited Liability Companies

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## Other "Entities"

- Limited Partnerships
- General Partnerships
- Sole Proprietorships (d/b/a "doing business as")

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## Foreign Entities

- Foreign Corporations
- Foreign Associations
- Foreign Limited Liability Companies

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## Corporations

- A domestic corporation is an entity created by or under the Texas Business Corporation Act
- A corporation is made up of shareholders, directors and officers
- The law treats the corporation itself as a “person” who can sue and be sued, hold title to and convey real property in its own name
- The law calls a corporation an “artificial person”

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## Formation

- In Texas, a corporation is formed by articles of incorporation, which are filed with the Secretary of State
- Once the articles of incorporation are filed and fees are paid, the Secretary of State issues a Certificate of Incorporation
- Before transacting any business or incurring any debt, the corporation must issue \$1,000 worth of shares\*
- In addition, once the certificate of incorporation, the initial board of directors named in the articles must hold an organizational meeting and adopt bylaws, elect officers and transact business, if any

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## Title Insurance Requirements

- When dealing with a transaction involving a corporation, agents must determine the existence of the corporation and that it is in good standing with the Secretary of the State of Texas
- This may be done by obtaining a certificate of incorporation from the Secretary of State

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## Requirements *continued...*

- Agents must also ascertain the power or authority of the officer of the corporation who executes any instrument(s) or other documentation on its behalf
- Bylaws and/or the Articles of Incorporation may indicate who has authority to sign on behalf of the corporation
- Otherwise, require a certified copy of a properly executed corporate resolution from the board of directors

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## Non-Profit Corporations

- Organized for a non-profit purpose (charitable, political, fraternal, scientific, civic, religious, etc.) where the main objective is to provide a service or function
- There are no shareholders

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## Formation

- Much like a for-profit corporation
- Article of Incorporation are filed with the Secretary of State
- Once the articles are filed and fees are paid, the Secretary of State issues a Certificate of Incorporation
- In addition, once the certificate of incorporation, the initial board of directors named in the articles must hold an organizational meeting and adopt bylaws, elect officers and transact business, if any

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## Title Insurance Requirements

- Determine the existence of the non-profit corporation and that is in good standing with the Secretary of the State of Texas
- This may be done by obtaining a certificate of incorporation from the Secretary of State

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## Requirements *continued...*

- Review the articles of incorporation to ascertain the governance of the non-profit corporation.
- Management of the non-profit may be vested in a board of directors, trustees, or in the membership.
- Obtain and review the corporate resolution authorizing the transaction.
- Resolution may be by the board of directors, or the membership, depending on the governance provisions found in the articles of incorporation.

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## Professional Corporation

- Group of persons who render professional services requiring a license or other legal authority
- Often used by professionals because of its tax benefits
- Attorneys, architects, CPAs, veterinarians, dentists, etc.

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## Formation

- Articles of incorporation are filed with the Secretary of the State of Texas along with any required fees
- Secretary of State issues a Certificate of Incorporation
- A professional corporation is made up of directors, officers and shareholders
- A professional corporation may be formed by other professional corporations

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## Title Insurance Requirements

- Determine that the professional corporation exists and is in good standing
- Review the articles of incorporation, bylaws and/or any corporate resolution executed by the board of directors in order to determine who has the authority to act on behalf of the professional corporation

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## Cooperative Associations

- A corporation or association organized for the purpose of rendering economic services, without gain to self, shareholders or members who own and control it
- The Texas Cooperative Association Act creates a cooperative association (Tex. Civ. Stat. Ann. art. 1396.50.01)

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## Formation

- Five or more natural persons, or five or more hospitals or hospital councils or related subgroups, or two or more associations may incorporate
- Articles of Incorporation must be signed and acknowledged by each of the incorporators (individuals) or by presidents and secretaries (associations)
- The articles must be filed with the Secretary of State. Once the articles are received and fees paid, the Secretary of State shall issue a certificate of incorporation and the directors shall hold an organizational meeting

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## Title Insurance Requirements

- Agents must determine that the corporation exists and is in good standing with the Secretary of State
- Agents must also determine the authority of the person signing on behalf of the corporation by obtaining certified copies of the articles of incorporation, bylaws and corporate resolution executed by the board of directors

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## Unincorporated Non-Profit Associations

- Treated as a separate legal entity as opposed to a group of individuals for certain matters
- Defined as an: "unincorporated organization consisting of three or more members joined by mutual consent for a common, nonprofit purpose"
- Applies whether or not the entity is tax exempt
- Applicable law: Texas Uniform Unincorporated Nonprofit Association Act (TUUNA), Texas Civil Statutes Art. 1396-70.01 et seq.

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- A nonprofit association may acquire, hold, transfer or encumber an estate or interest in real property
- Title is held in the name of the unincorporated association
- Frequently, churches hold title as unincorporated nonprofit associations
- Other examples are: cemetery associations, civic associations and social clubs

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- ### Formation
- There are no formal filing requirements
  - However, two discretionary filings may be made:
    - a statement of authority to transfer an estate or an interest in real property, and
    - the appointment of an agent authorized to receive service of process on behalf of the nonprofit association

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- ### Statement of Authority
- Must set forth the name, address in this state, including the street address, if any, or its address out of state (if applicable) of the nonprofit association
  - Must set forth the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association
  - Must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest
  - An amendment must meet the requirements for execution and recording of an original statement.
  - A recorded statement is valid for five (5) years unless cancelled earlier

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## Title Insurance Requirements

- Statement of Authority must be filed of record prior to the transaction
- Require copies any organizational documents that authorize the specific transaction
- If not statement exists, then require documentation authorizing transaction and who may act on behalf of the association
- If dealing with a church or other religious group, please call a Texas Underwriting Counsel

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## Professional Associations

- A group of professional people organized to practice their profession together under the Texas Professional Association Act (Tex. Rev. Civ. Stat. Ann. art. 1528f.)
- A professional association consists of officers, a board and members
- Typically, a professional association involves people in the medical profession

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## Formation

- Created by filing articles of association with the secretary of state pursuant to the Texas Professional Association Act (TPAA)
- Individuals licensed as medical professionals who are licensed to practice their profession under Texas law may form a professional association for the purpose of performing professional services and dividing the gains as stated in the articles of association or bylaws.
- The articles of association must be filed with the Secretary of State
- A certificate of association will be issued once the articles are filed and fees are paid

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## Title Insurance Requirements

- Require a copy of the articles of association or bylaws to determine the authority of the person signing on behalf of the professional association
- Confirm that professional association is still in existence (good standing) with the Secretary of State

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## Limited Liability Companies

- Not a partnership or a corporation but a distinct type of entity created by statute (Texas Limited Liability Company Act, Tex. Civ. Stat. Ann. art. 1528n - § 1.01 et seq.)
- Similar to a general partnership with limited liability, or to a limited partnership where all the owners are free to participate and all have limited liability
- The owners of the LLC are called "members"

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## Formation

- Any individual may act as an organizer of an LLC by signing and filing Articles of Organization with the secretary of state
- Upon filing and payment of required fees, the secretary of state will issue a certificate of organization
- The articles of organization (sometimes called the operating agreement) governs the management of the LLC in the conduct of its business and distribution of profits
- This is similar to the corporate charter and bylaws for a corporation or the partnership agreement for a partnership

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## Title Insurance Requirements

- Require copies of the articles of organization (operating agreement) to determine the authority of the person signing on behalf of an LLC
- Certificate of organization should be obtained from the secretary of state
- Obtained a good standing certificate from the comptroller of public accounts in Texas

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## Requirements *continued...*

- There may not be a need for an authorizing resolution since, by statute, every manager and officer is an agent of the LLC for the purpose of its business

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## Other "Entities"

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## Limited Partnerships

- A partnership formed by two or more persons and having one or more general partners and one or more limited partners
- General Partner:
  - manage business
  - personally liable for partnership debts
- Limited Partner:
  - contribute capital
  - share profits
  - take no part in running the business
  - incur no liability beyond capital contribution(s)

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## Formation

- Texas Revised Limited Partnership Act (Tex. Rev. Civ. Stat. Ann. art. 6132a-1)
- Partners must enter into a partnership agreement and one or more partners, including all of the general partners, must execute a certificate of limited partnership
- Certificate and filing fee must be filed with the secretary of state

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## Title Insurance Requirements

- All limited partners should join in the execution of any real estate instrument unless:
  - There is authority for less than all of them to act (set forth in the partnership agreement)
  - The consent of all the limited partners is required by agreement (i.e. consent is given in a separate agreement that all limited partners sign rather than join in the execution of real estate documents)
  - If all, or substantially all, of the assets of the partnership are being transferred

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## General Partnerships

- One or more persons carrying on a business as co-owners for profit
- All partners share in the profits and losses as well as the management equally, though their capital contributions may vary
- Partnerships are created by the Texas Revised Partnership Act (Tex. Rev. Civ. Stat. Ann. art. 6132b-1.01 et seq.)

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## Formation

- Two or more people may enter into a partnership agreement
- Unless otherwise provided in the agreement, the Texas Revised Partnership Act will govern the actions of the partnership

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## Title Insurance Requirements

- Partnership property should be conveyed or mortgaged in the same name in which the title was acquired
- The question of required signatories is dependent upon the partnership agreement
- All partners should join in the execution of instruments affecting partnership property unless:
  - the partnership agreement (or other document signed by all the partners) delegates the authority to a certain partner or partners

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## Sole Proprietorships

- A single person acting as a business in her/her own name
- Not considered a separate legal entity in Texas
- Owner may elect to operate under an assumed name by recording an assumed name certificate in the county or counties in which he/she transact business

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## Title Insurance Requirements

- Determine the homestead status of the subject property
- Do not show an assumed name certificate as an exception on Schedule B of the policy

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## Joint Venture

- A legal entity, which is like a partnership, and is engaged in a particular transaction for mutual profit
- Tex. Bus. & Commerce Code § 36.01 et seq.

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## Formation and Insuring Requirements

- See the General Partnership section of this presentation

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## Financial Institutions

- Usually not practical to make demands on a financial institution
- If possible, obtain and review:
  - a copy from the applicable governmental regulatory body, a letter confirming the institution's charter is in good standing,
  - Articles of Association enumerating the powers of the institution
  - Certificate of Incumbency indicating the appropriate officers with authority to enter into the transaction

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## Foreign Entities

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## Foreign Corporations

- A corporation that has been incorporated outside of the state of Texas
- Texas Business Corporation Act § 8.01 et seq.
- Cannot do business in Texas unless it has been issued a certificate of authority to do so by the Texas secretary of state

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## Title Insurance Requirements

- Determine that the foreign corporation exists and is in good standing with the state or territory where it is incorporated
- If the transaction is the sale of a piece of property that is the only property the foreign corporation owns in Texas, then a certificate of authority is not required

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- Just as with a domestic corporation:
  - Agents must also ascertain the power or authority of the officer of the corporation who executes any instrument(s) or other documentation on its behalf
  - Bylaws and/or the Articles of Incorporation may indicate who has authority to sign on behalf of the corporation
  - Otherwise, require a certified copy of a properly executed corporate resolution from the board of directors

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## Foreign Associations

- A foreign association operating on a cooperative basis and complying with the laws of the state in which it is organized may transact business within Texas (Tex. Rev. Civ. Stat. Ann. art. 1396-50.01 § 43)

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## Formation and Title Insurance Requirements

- A foreign association is formed according to the state laws in which it is organized
- Require a copy of the articles of association or bylaws to determine the authority of the person signing on behalf of a professional association

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## Foreign Limited Liability Companies

- An LLC that has been organized outside of the state of Texas (Tex. Rev. Civ. Stat. Ann. art. 1528 § 7.01 et seq.)
- In order to transact business in Texas, a foreign LLC must obtain a certificate of authority from the Texas secretary of state

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## Title Insurance Requirements

- Require a copy of the certificate of authority
- Require copies of the articles of organization (operating agreement) to determine the authority of the person signing on behalf of a limited liability company

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## Thank You!

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