PART I. INTRODUCTION

Volume 19

CHAPTER 1. HISTORICAL DEVELOPMENT OF BUSINESS FORMS IN TEXAS

~	
§ 1:1	Introduction
§ 1:2	A look backward
§ 1:3	Professional corporations and associations
§ 1:4	Unincorporated business forms in general
§ 1:5	General partnerships
§ 1:6	Limited liability partnerships
§ 1:7	Limited partnerships
§ 1:8	Limited liability limited partnerships
§ 1:9	Limited liability companies
§ 1:10	Real estate investment trusts
§ 1:11	A menu of modern Texas business forms
§ 1:12	Federal income taxation and the Texas franchise ta
§ 1:13	The Texas Securities Act
8 1.11	Toyog eggo low

CHAPTER 2. THE BUSINESS ORGANIZATIONS CODE

OIU	
§ 2:1	Introduction
§ 2:2	Effective dates and applicability of the Business Organizations Code
§ 2:3	The creation of the Texas Business Law Section of the State Bar and the Texas Business Law Foundation
§ 2:4	The background of the Business Organizations Code: the Legislative Council's statutory revision program
§ 2:5	The codification problem faced by the Ad Hoc Committee and its resolution
§ 2:6	The development of a novel codification structure
§ 2:7	The tangled history of the enactment of the Business Organizations Code
§ 2:8	The effect of the Business Organizations Code on attorneys
§ 2:9	The structure of the Business Organizations Code
$\S 2:10$	The advantages of the Business Organizations Code

CHAPTER 3. FACTORS IN SELECTING BUSINESS FORM

§ 3:1	Introduction
§ 3:2	The lawyer's role when advising a client about a proposed business investment
§ 3:3	Factors influencing the selection of business forms
§ 3:4	Characteristics of the principal Texas business forms
§ 3:5	The use by attorneys of forms and checklists
§ 3:6	Should we form a Texas corporation?
§ 3:7	Should we form a Texas limited liability company?
§ 3:8	Statutory limitations on Texas business forms
§ 3:9	Other issues with respect to selection of business forms
§ 3:10	Limited liability
§ 3:11	Continuity of life
§ 3:12	Centralized management
§ 3:13	Transferability of interests
§ 3:14	Raising of capital

CHAPTER 4. TAX CONSIDERATIONS

§ 4:1 Introduction to the Texas franchise tax § 4:2 The current Texas franchise tax § 4:3 Constitutionality of the current Texas franchise tax: an income tax in disguise? Limited liability companies and partnerships and the § 4:4 franchise tax Administration of the Texas franchise tax § 4:5 Devices to avoid the Texas franchise tax § 4:6 § 4:7 Federal taxation of business entities and "check-the-box" § 4:8 The subchapter S election Comparison of subchapter S and subchapter K § 4:9

CHAPTER 5. THE PROPRIETORSHIP

"Check-the-box" and related rules

The Kintner rules

§ 5:1	Sole proprietorships
§ 5:2	Use of assumed name
§ 5:3	Abandonment of assumed name
§ 5:4	Assumed name certificate (for individual conducting business a proprietor or sole practitioner)—Form
§ 5:5	Statement of abandonment of assumed name—Form

§ 4:10

§ 4:11

PART II. PARTNERSHIPS

CHAPTER 6. THE NATURE AND FORMATION OF GENERAL PARTNERSHIPS

Introduction to the Texas General Partnership Law
Statutory adoption of entity versus aggregate theory of partnership
Aggregate and entity treatment of partnerships in the Internal Revenue Code
Aggregate versus entity theory in other contexts
Capacity to be partners
Definition of partnership
Determining existence of partnership
Factors not indicating creation of partnership
Partnership by estoppel
The Internal Revenue Code definition of partnership
Formation of a partnership
Financing the new partnership
Tax considerations—Contributions to partnership
Checklist of matters to be considered in drafting a partnership agreement $$
Partnership agreement—Form
Use of assumed name
Abandonment of assumed name
Assumed name certificate (for a general partnership that is not a limited liability partnership)—Form
Statement of abandonment of assumed name—Form

CHAPTER 7. RIGHTS AND DUTIES OF PARTNERS INTER SE

§ 7:1	Role of partnership agreement and statute in defining
	relationship of partners
§ 7:2	Governing law
§ 7:3	Capital contributions
§ 7:4	Profit and loss sharing
§ 7:5	Reimbursement and indemnification of partner

- $\S~7:6$ Right to participate in management; vote necessary for decision
- § 7:7 Remuneration for services
- § 7:8 Classes of partners
- § 7:9 Admission of new partner
- § 7:10 Amendment of the partnership agreement
- § 7:11 Business transactions of partners with partnership

- § 7:12 Partner fiduciary duties under Texas Uniform Partnership Act and common law § 7:13 Partner duties under current statute
- § 7:14 Books and records; information concerning partnership
- § 7:15 Contractual variation of partner duties
- § 7:16 Remedies for partner's breach of duty
- § 7:17 Action by partnership or partner
- § 7:18 Action for an accounting

CHAPTER 8. THE RELATIONSHIP OF THE PARTNERSHIP AND THE PARTNERS TO THIRD PARTIES

- § 8:1 Law governing liability of partners to third parties
- § 8:2 Partnership powers
- § 8:3 The partner as agent of the partnership
- § 8:4 Partnership liability for partner's actionable conduct
- § 8:5 Liability of partners for debts of partnership
- § 8:6 Liability of incoming partner
- § 8:7 Liability of withdrawn partner
- Suits by partnership § 8:8
- § 8:9 Suits against partnership
- Enforcement of partnership liability against partner § 8:10
- § 8:11 Knowledge and notice
- Admissions § 8:12

CHAPTER 9. PARTNERSHIP PROPERTY AND THE PARTNER'S INTEREST IN THE **PARTNERSHIP**

- § 9:1 The concept of partnership property
- § 9:2 Partnership real estate
- § 9:3 Integration of partnership property concepts with community property system
- § 9:4 Partner's interest in partnership
- § 9:5 Transfer of partnership interest and rights of transferee
- § 9:6 Restrictions on transfer of partnership interest
- § 9:7 Creating and perfecting security interests in partnership interests
- § 9:8 Elimination and re-emergence of charging order

CHAPTER 10. ADJUSTING AND TERMINATING THE GENERAL PARTNERSHIP: WITHDRAWAL OF PARTNER, WINDING UP OF PARTNERSHIP

PAR'I	'NER, WINDING UP OF PARTNERSHIP
§ 10:1	Entity approach to changes in partnership personnel and other adjustments to partnership
§ 10:2	Elimination of concept of dissolution from Texas General Partnership Law
§ 10:3	Dissolution as concept distinct from winding up and termination
§ 10:4	Causes of dissolution under law prior to Texas Revised Partnership Act
§ 10:5	Aftermath of dissolution under law prior to Texas Revised Partnership Act: winding up or continuation of partnership business
§ 10:6	Wrongful dissolution under law prior to Texas Revised Partnership Act
§ 10:7	Effect of dissolution on agency powers of partners under law prior to Texas Revised Partnership Act
§ 10:8	Effect of dissolution on liabilities of partners under law prior to Texas Revised Partnership Act
§ 10:9	Winding up and termination under law prior to Texas Revised Partnership Act
§ 10:10	Rules for distributions to creditors and partners under law prior to Texas Revised Partnership Act
§ 10:11	Continuation of partnership business after dissolution under law prior to Texas Revised Partnership Act
§ 10:12	Withdrawal and continuation under current law
§ 10:13	Events of withdrawal
§ 10:14	Wrongful withdrawal
§ 10:15	Redemption of withdrawing partner's interest if partnership continues without winding up
§ 10:16	Procedures for resolution of redemption of withdrawn partner's interest
§ 10:17	Redemption of withdrawn partner if withdrawal is followed by event requiring winding up
§ 10:18	Redemption of transferee's interest
§ 10:19	Effect of event of withdrawal on withdrawn partner's rights and duties as to partnership and other partners
§ 10:20	Effect of event of withdrawal on partner's liability for partnership obligations
§ 10:21	Effect of event of withdrawal on partner's power to bind partnership
§ 10:22	Partnership agreement buyout provisions
§ 10:23	Tax aspects of entry or withdrawal of a partner

§ 10:24	Tax consequences of sale of a partnership interest
§ 10:25	Tax consequences of a liquidating distribution to a partner
§ 10:26	Termination of partnership for federal income tax purposes
§ 10:27	Events requiring winding up
§ 10:28	Events requiring winding up in at-will partnerships
§ 10:29	Events requiring winding up in partnerships for an agreed duration; continuation by agreement
§ 10:30	Illegality of business as event requiring winding up
§ 10:31	Winding up on judicial decree
§ 10:32	Conduct of winding up
§ 10:33	Effect of winding up on partner's power to bind partnership
§ 10:34	Effect of winding up on partner's liability
§ 10:35	Rules for distribution to creditors and partners in winding up
§ 10:36	Notice of dissolution, withdrawal, or winding up

CHAPTER 11. MERGER, INTEREST EXCHANGE, AND CONVERSION OF GENERAL PARTNERSHIPS

GLIT	
§ 11:1	Merger
§ 11:2	Plan of merger
§ 11:3	Certificate of merger
§ 11:4	Effect of merger
§ 11:5	Interest exchange
§ 11:6	Conversion
§ 11:7	Plan of conversion
§ 11:8	Certificate of conversion
§ 11:9	—Form
§ 11:10	Effect of conversion
§ 11:11	Conversion and continuance
§ 11:12	Reorganization under bankruptcy and similar laws

CHAPTER 12. LIMITED LIABILITY PARTNERSHIPS

§ 12:1	Introduction
§ 12:2	Development of the Texas limited liability partnership provisions
§ 12:3	Nature of limited liability partnership
§ 12:4	Liability limitation
§ 12:5	Registration and renewal
§ 12:6	Registered limited liability partnership application—Form
§ 12:7	Registered limited liability partnership renewal—Form
§ 12:8	Limited liability partnership name
§ 12:9	Insurance or financial responsibility under prior law

§ 12:10	Amendment or correction of limited liability partnership filing
§ 12:11	Registered limited liability partnership amendment—Form
§ 12:12	Withdrawal of registration
§ 12:13	Registered limited liability partnership withdrawal—Form
§ 12:14	Use of assumed name
§ 12:15	Assumed name certificate—Form
§ 12:16	Abandonment of assumed name
§ 12:17	—Form
§ 12:18	Considerations in drafting the partnership agreement of an LLP
§ 12:19	Piercing and other potential approaches to holding partners of limited liability partnership liable
§ 12:20	Transacting business outside Texas
§ 12:21	Limited liability limited partnerships (the "Triple LP")
§ 12:22	Foreign limited liability partnerships
§ 12:23	Governing law
§ 12:24	Activities of foreign limited liability partnership not
	constituting transacting business
§ 12:25	Procedure for foreign limited liability partnership's filing of application for registration
§ 12:26	Foreign limited liability partnership application for registration—Form
§ 12:27	Renewal of foreign limited liability partnership application for registration—Form
§ 12:28	Applicability of foreign registration provisions to foreign limited liability limited partnerships
§ 12:29	Effect of failure to qualify
§ 12:30	Amendment of foreign limited liability partnership registration or renewal
§ 12:31	Application for amendment of registration by a foreign limited liability partnership—Form
§ 12:32	Registered agent and registered office
§ 12:33	Change of registered agent and/or registered office
§ 12:34	—Form
§ 12:35	Resignation or rejection of appointment by registered agent
§ 12:36	Statement of resignation of registered agent—Form
§ 12:37	Change of name or address of registered agent
§ 12:38	Service of process on foreign limited liability partnership
§ 12:39	Withdrawal of foreign qualification
§ 12:40	Withdrawal of foreign limited liability partnership qualification—Form
	•

CHAPTER 13. THE NATURE AND FORMATION OF LIMITED PARTNERSHIPS

§ 13:1 Background and introduction

§ 13:2	Advantages and disadvantages of limited partnerships
§ 13:3	Entity nature of limited partnership
§ 13:4	Certificate of limited partnership
§ 13:5	Certificate of formation of limited partnership—Form
§ 13:6	Name of limited partnership
§ 13:7	Application for reservation of name—Form
§ 13:8	Notice of transfer of reserved name—Form
§ 13:9	Use of assumed name
§ 13:10	Assumed name certificate—Form
§ 13:11	Abandonment of assumed name
§ 13:12	Statement of abandonment of assumed name—Form
§ 13:13	Registered agent and registered office
§ 13:14	Change of registered agent and/or registered office
§ 13:15	—Form
§ 13:16	Resignation or rejection of appointment by registered agent
§ 13:17	Statement of resignation of registered agent—Form
§ 13:18	Change of name or address of registered agent
§ 13:19	Failure to file certificate of formation: substantial versus strict compliance standard
§ 13:20	Procedures available to persons who erroneously believe they
5	are limited partners
§ 13:21	Limited partnership agreement
§ 13:22	Limited partnership agreement (simple)—Form
§ 13:23	Limited partnership agreement (complex)—Form
§ 13:24	Nature of business permitted
§ 13:25	Use of entity partners
§ 13:26	Financing the limited partnership
§ 13:27	Liability for contribution
§ 13:28	Required recordkeeping
§ 13:29	Periodic reporting requirement
§ 13:30	Periodic report by a limited partnership—Form
§ 13:31	Amendment and restatement of certificate of limited
, 10.01	partnership
§ 13:32	Applicability of registered limited liability partnership
0	provisions
	•

CHAPTER 14. RIGHTS, POWERS, DUTIES, AND LIABILITIES OF GENERAL AND LIMITED PARTNERS

- § 14:1 Role of general and limited partners in general
- § 14:2 Admission of partners
- § 14:3 Classes of partners
- § 14:4 Liability of general and limited partners for obligations of the partnership

§ 14:5	Exceptions to limited liability of limited partners
§ 14:6	Liability of limited partners who participate in control of business
§ 14:7	Use of corporate or limited liability company general partners
§ 14:8	Veil piercing of limited partnership
§ 14:9	Veil piercing of entity general partners
§ 14:10	Liability of limited partner whose name is contained in partnership name
§ 14:11	Liability for signing false certificates
§ 14:12	Contributions of partners
§ 14:13	Partner's liability for contribution obligations
§ 14:14	Profits and losses
§ 14:15	Sharing and timing of distributions
§ 14:16	Limitation on distributions
§ 14:17	Business transactions of partners with partnership
§ 14:18	Persons who are both a general partner and a limited partner
§ 14:19	Withdrawal of general partner
§ 14:20	Removal of general partner
§ 14:21	Withdrawal of limited partner
§ 14:22	Death of limited partner
§ 14:23	Nature of partnership interest
§ 14:24	Application of securities laws to interests in limited partnership
§ 14:25	Assignment of partnership interest
§ 14:26	Restrictions on transfer of partnership interest
§ 14:27	Admission of assignee as partner
§ 14:28	Creating and perfecting security interests in partnership interests
§ 14:29	Rights of judgment creditor—Charging order
§ 14:30	Decision making and voting
§ 14:31	Amendment of partnership agreement
§ 14:32	Traditional fiduciary duties of general partners and the impact of the Texas Revised Partnership Act
§ 14:33	Application of fiduciary duties to limited partners
§ 14:34	Fiduciary duties of affiliates of general partner
§ 14:35	Statutory authorization to modify duties and liabilities of partners
§ 14:36	Partner's information rights
§ 14:37	Indemnification of general partners and others
§ 14:38	Derivative suits
§ 14:39	Linkage of general partnership law to limited partnership provisions

CHAPTER 15. WINDING UP AND TERMINATION OF LIMITED PARTNERSHIPS

§ 15:1	Dissolution versus events requiring winding up: a shift in terminology under the Business Organizations Code
§ 15:2	Events requiring winding up
§ 15:3	Avoidance of winding up and termination
§ 15:4	Judicial decree requiring winding up
§ 15:5	Winding up
§ 15:6	Disposition of assets in winding up
§ 15:7	Certificate of termination
§ 15:8	Certificate of termination of limited partnership—Form
§ 15:9	Reinstatement after voluntary termination
§ 15:10	Involuntary termination by Secretary of State or court action
§ 15:11	Forfeiture of privileges and certificate of formation under Texas Tax Code
§ 15:12	Limited survival after termination and resolution of claims
§ 15:13	Receivership
§ 15:14	Forfeiture of right to transact business and termination of certificate of formation for failure to file periodic report

CHAPTER 16. MERGER, INTEREST EXCHANGE, AND CONVERSION OF LIMITED PARTNERSHIPS

§ 16:1	Merger
§ 16:2	Plan of merger
§ 16:3	Certificate of merger
§ 16:4	—Form
§ 16:5	Effect of merger
§ 16:6	Interest exchange
§ 16:7	Certificate of exchange
§ 16:8	Conversion
§ 16:9	Plan of conversion
§ 16:10	Certificate of conversion
§ 16:11	—Form
§ 16:12	Effect of conversion

CHAPTER 17. FOREIGN LIMITED PARTNERSHIPS

Reorganization under bankruptcy and similar laws

Conversion and continuance

- § 17:1 Law governing foreign limited partnerships
- § 17:2 Registration requirement

§ 16:13

§ 16:14

§ 17:3	The meaning of "transacting business" and "doing business"
§ 17:4	Procedure for filing statement of foreign registration
§ 17:5	Application for registration—Form
§ 17:6	Amendment of application for registration
§ 17:7	Amendment to application for registration of foreign limited partnership—Form
§ 17:8	Periodic reporting and franchise tax compliance
§ 17:9	Effect of transacting business without registration
§ 17:10	Use of assumed name and change of name
§ 17:11	Reservation of name
§ 17:12	Registration of name
§ 17:13	—Form
§ 17:14	Renewal of name registration—Form
§ 17:15	Registered agent and registered office
§ 17:16	Service of process on foreign limited partnership
§ 17:17	Withdrawal of registration
§ 17:18	Certificate of withdrawal of foreign limited partnership— Form
§ 17:19	Forfeiture, cancellation, or revocation of registration

PART III. LIMITED LIABILITY COMPANIES

CHAPTER 18. THE LIMITED LIABILITY COMPANY: BACKGROUND AND INTRODUCTION

TIATE	LODUCTION
§ 18:1	Origin of limited liability companies
§ 18:2	Successful introduction of limited liability companies in the United States
§ 18:3	Basic differences between limited liability companies and other business entities
§ 18:4	History and development of the Texas Limited Liability Company Act and the Texas Limited Liability Company Law (Business Organizations Code)
§ 18:5	Nonuniformity of state LLC statutes: Texas stays on the cutting edge
§ 18:6	Flexibility in the management of limited liability companies (manager-management or member-management)
§ 18:7	Tax advantages and disadvantages of limited liability companies relative to other business forms
§ 18:8	Limited liability and other incidents of entity nature of limited liability companies

CHAPTER 19. THE FORMATION OF LIMITED LIABILITY COMPANIES

§ 19:1	Formation of limited liability companies in general
§ 19:2	Premature commencement of business
§ 19:3	Certificate of formation
§ 19:4	Execution and filing of certificate of formation
§ 19:5	Certificate of formation—Form
§ 19:6	Selection and reservation of limited liability company name
§ 19:7	Application for reservation of name—Form
§ 19:8	Transfer of reserved limited liability company name—Form
§ 19:9	Use of assumed name
§ 19:10	Abandonment of assumed name
§ 19:11	Assumed name certificate—Form
§ 19:12	Statement of abandonment of assumed name—Form
§ 19:13	Selection and role of organizers
§ 19:14	Period of duration
§ 19:15	The purpose clause
§ 19:16	Limited liability company powers
§ 19:17	Uncertainty regarding application of ultra vires doctrine to limited liability companies
§ 19:18	Registered office and registered agent
§ 19:19	Change of registered agent or registered office
§ 19:20	Statement of change of registered office or registered agent or both by a limited liability company—Form
§ 19:21	Resignation or rejection of appointment of registered agent
§ 19:22	Statement of resignation of registered agent—Form
§ 19:23	Initial managers and members
§ 19:24	Choice of management structure
§ 19:25	Nature and purpose of the company agreement
§ 19:26	Consideration of mandatory and variable statutory provisions in drafting the company agreement
§ 19:27	Mandatory provisions to consider in drafting the company agreement
§ 19:28	Significant default rules to consider in drafting the company agreement
§ 19:29	Limited liability company agreement (simple)—Form
§ 19:30	Limited liability company agreement (complex)—Form
§ 19:31	Relationship of certificate of formation and company agreement
§ 19:32	Financing the limited liability company
§ 19:33	Liability for contribution
§ 19:34	Required recordkeeping
8 10·25	Sorios limited liability companies

Volume 20

CHAPTER 20. RIGHTS, POWERS, DUTIES, AND LIABILITIES OF MEMBERS AND MANAGERS OF LIMITED LIABILITY COMPANIES

§ 20:1	Members
§ 20:2	Number of members
§ 20:3	Admission of members
$\S 20:4$	Classes of members; classes distinguished from series
§ 20:5	Voting, quorum, and action of members in general
§ 20:6	Liability to third parties
§ 20:7	Veil piercing
§ 20:8	Liability of member for contribution
§ 20:9	Allocation of profits and losses
§ 20:10	Sharing and timing of distributions
§ 20:11	Withdrawal of member
§ 20:12	Distribution upon withdrawal; buyout of member's interest
§ 20:13	Limitation on distributions
§ 20:14	Nature of membership interest
$\S 20:15$	Membership interests under securities laws
§ 20:16	Assignment of membership interest
$\S 20:17$	Restrictions on transfer of membership interest
§ 20:18	Admission of assignee as member
§ 20:19	Creating and perfecting security interests in membership
	interests
§ 20:20	Rights of judgment creditor—Charging order
$\S~20:21$	Role of managers; election and term
$\S~20:22$	Removal of manager
$\S~20:23$	Filling manager vacancies
$\S~20:24$	Number of managers
$\S~20:25$	Classification of managers
§ 20:26	Voting, quorum, and action of managers
$\S~20:27$	Meetings of managers
§ 20:28	Committees of managers
§ 20:29	Officers
§ 20:30	Authority and power to bind LLC
§ 20:31	Amendment of company agreement
§ 20:32	Amendment of certificate of formation
§ 20:33	Execution and filing of certificate of amendment
§ 20:34	Certificate of amendment of certificate of formation—Form
§ 20:35	Restated certificate of formation
§ 20:36	—Form

Business Organizations

	BUSINESS URGANIZATION
§ 20:37	Fiduciary duties of members and managers
§ 20:38	Duty of care
§ 20:39	Duty of loyalty
§ 20:40	Self-dealing transactions
§ 20:41	Member's information rights
§ 20:42	Variation of duties and limitation of liabilities of managers and members
§ 20:43	Indemnification of managers and members
§ 20:44	Derivative suits
§ 20:45	Suit against limited liability company
	PTER 21. WINDING UP AND MINATION OF LIMITED LIABILITY
_	
	PANIES
§ 21:1	Dissolution versus events requiring winding up: a shift in terminology under the Business Organizations Code
§ 21:2	Events requiring winding up
§ 21:3	Avoidance of winding up and termination
§ 21:4	Bankruptcy of member
$\S 21:5$	Winding up prior to admission of members
§ 21:6	Winding up process in general
§ 21:7	Payment of creditors
§ 21:8	Payment to members
§ 21:9	Certificate of termination
§ 21:10	—Form
§ 21:11	Reinstatement after voluntary termination
§ 21:12	Judicial decree requiring winding up on application of member
§ 21:13	Receivership and judicial liquidation
§ 21:14	Receiver of specific limited liability company assets
§ 21:15	Appointment of receiver to rehabilitate limited liability company
§ 21:16	Judicial liquidation of limited liability company
§ 21:17	Involuntary winding up and termination in action by Attorney General
§ 21:18	Involuntary termination by Secretary of State
§ 21:19	Forfeiture of certificate of formation for failure to pay franchise tax
§ 21:20	Reinstatement of limited liability company after involuntary termination or forfeiture
§ 21:21	Limited survival of limited liability company after

termination

CHAPTER 22. MERGER, INTEREST EXCHANGE, AND CONVERSION OF LIMITED LIABILITY COMPANIES

§ 22:1	Merger
§ 22:2	Plan of merger
§ 22:3	Certificate of merger
§ 22:4	—Form
§ 22:5	Effect of merger
§ 22:6	Merger involving subsidiary
§ 22:7	Holding company creation merger
§ 22:8	Interest exchange
§ 22:9	Certificate of exchange
§ 22:10	Conversion
§ 22:11	Plan of conversion
§ 22:12	Certificate of conversion
§ 22:13	—Form
§ 22:14	Effect of conversion
§ 22:15	Conversion and continuance
§ 22:16	Reorganization under bankruptcy and similar laws

CHAPTER 23. FOREIGN LIMITED LIABILITY COMPANIES

	ELLI COMILIEM NEW
§ 23:1	Law governing foreign limited liability company
§ 23:2	Registration requirement
§ 23:3	The meaning of "transacting business" and "doing business"
§ 23:4	Procedure for filing statement of foreign registration
§ 23:5	Application for registration—Form
§ 23:6	Effect of registration
§ 23:7	Amendment of application for registration
§ 23:8	Amendment to application for registration of foreign limited
	liability company—Form
§ 23:9	Effect of transacting business without registration
$\S 23:10$	Use of assumed name and change of name
$\S 23:11$	Reservation of name
$\S 23:12$	Registration of name
$\S 23:13$	—Form
$\S 23:14$	Renewal of name registration—Form
§ 23:15	Registered agent and registered office
$\S 23:16$	Service of process on foreign limited liability company
$\S~23:17$	Withdrawal of registration
§ 23:18	Certificate of withdrawal—Form
§ 23:19	Judicial revocation of registration by Attorney General
§ 23:20	Administrative revocation of registration by Secretary of
	State

PART IV. PROFESSIONAL ENTITIES AND OTHER MISCELLANEOUS BUSINESS ORGANIZATIONS

CHAPTER 24. PROFESSIONAL CORPORATIONS, PROFESSIONAL ASSOCIATIONS, AND PROFESSIONAL LIMITED LIABILITY COMPANIES

	LED LIABILITY COMPANIES
$\S 24:1$	Historical development of professional corporations and
	professional associations
$\S~24:2$	Overview and scope of Texas Professional Corporation Law
$\S~24:3$	Formation of professional corporation
$\S~24:4$	Certificate of formation of professional corporation
$\S~24:5$	—Form
$\S~24:6$	Name of professional corporation
$\S~24:7$	Directors and officers of a professional corporation
§ 24:8	Ownership of a professional corporation
$\S~24:9$	Limited liability of shareholders of professional corporation
§ 24:10	Applicability of general for-profit corporation provisions of the Business Organizations Code to professional corporations
§ 24:11	Federal income tax treatment of professional corporation
§ 24.11 § 24:12	Franchise tax treatment of professional corporation
§ 24.12 § 24:13	Overview and scope of Texas Professional Association Law
§ 24.13 § 24:14	Formation of professional association
•	*
§ 24:15	Certificate of formation of professional association
§ 24:16	—Form
§ 24:17	Name of professional association
§ 24:18	Governance of professional association
§ 24:19	Ownership of professional association
§ 24:20	Limited liability of members of professional association
$\S~24:21$	Professional association annual statement requirement
§ 24:22	Applicability of general for-profit corporation provisions of the Business Organizations Code to professional associations
§ 24:23	Federal income tax treatment of professional association
§ 24:24	Franchise tax treatment of professional association
§ 24:25	Overview and scope of Texas Professional Limited Liability Company Law
§ 24:26	Formation of professional limited liability company

TABLE OF CONTENTS

I ABLE OF	CONTENTS
§ 24:27	Certificate of formation of professional limited liability company
§ 24:28	—Form
§ 24:29	Name of professional limited liability company
§ 24:30	Governance of a professional limited liability company
§ 24:31	Ownership of a professional limited liability company
§ 24:32	Limited liability of members of professional limited liability company
§ 24:33	Applicability of general limited liability company provisions of the Business Organizations Code to professional limited liability companies
§ 24:34	Federal income tax treatment of professional limited liability company
§ 24:35	Franchise tax treatment of professional limited liability company
§ 24:36	Foreign professional entities
$\S 24:37$	Registration of foreign professional entity
MISC	TER 25. NONPROFIT AND OTHER ELLANEOUS FORMS OF BUSINESS NIZATION
§ 25:1	The Texas Uniform Unincorporated Nonprofit Association Act
§ 25:2 § 25:3	Definition of unincorporated nonprofit association Capacity of nonprofit association to hold property
§ 25.3 § 25:4	Statement of authority to transfer real property held in the name of a nonprofit association
§ 25:5	Capacity of nonprofit association to sue and be sued and nonprofit association standing
§ 25:6	Service of process on nonprofit association
§ 25:7	Appointment of agent to receive service of process for nonprofit association
§ 25:8	Liability in tort and contract under Texas Uniform Unincorporated Nonprofit Association Act
§ 25:9	Books and records of nonprofit association
§ 25:10	The Texas Nonprofit Corporation Law
§ 25:11	Formation of a nonprofit corporation
§ 25:12	Certificate of formation of nonprofit corporation—Form
§ 25:13	Options in structuring a nonprofit corporation
$\S 25:14$	Liability of members of nonprofit corporation
§ 25:15	Duties and liabilities of directors and officers of nonprofit corporation
§ 25:16	Books and records requirements of the Texas Nonprofit Corporation Law
§ 25:17	Periodic report of nonprofit corporation

§ 25:18 Federal income tax treatment

§ 25:19	State tax treatment
§ 25:20	Cooperative associations
§ 25:21	Business trusts
§ 25:22	Real estate investment trusts

PART V. FOR-PROFIT CORPORATIONS

CHAPTER 26. PREORGANIZATION MATTERS

A. INTRODUCTION

§ 26:1	Organizing a going business as a corporation
§ 26:2	Providing notice of corporate status
§ 26:3	Selecting a state of organization

B. THE CORPORATION'S NAME

§ 26:4	Selection of a corporate name
§ 26:5	Reservation of a corporate name
§ 26:6	Registration of a corporate name

C. PROMOTER'S TRANSACTIONS

§ 26:7	The promoter's role
§ 26:8	Liability of the promoter
§ 26:9	Liability of the corporation
§ 26:10	Enforcement by the promoter or the corporation
§ 26:11	Compensation of promoters

D. PREMATURE COMMENCEMENT OF BUSINESS

§ 26:12	De facto corporations
§ 26:13	Corporations by estoppel

E. AGREEMENTS TO FORM A CORPORATION

§ 26:14	Basic considerations
$\S~26:15$	Model agreement to form a corporation

CHAPTER 27. ORGANIZING A CORPORATION

A. INTRODUCTION

§ 27:1 Formation of corporations in general

§ 27:4	Selection and role of organizers Corporation service companies HE CERTIFICATE OF FORMATION
-	Outline of procedure to form a Texas corporation

- § 27:5 The content of the certificate
- § 27:6 Period of duration
- The purposes clause § 27:7
- § 27:8 Corporate powers
- § 27:9 The ultra vires doctrine
- § 27:10 Improper purposes
- § 27:11 Authorized capital
- § 27:12 Registered office and registered agent
- § 27:13 The initial board of directors
- § 27:14 Optional certificate provisions
- Executing and filing the certificate § 27:15
- Correction of filings with the Secretary of State § 27:16
- Amending the certificate § 27:17
- § 27:18 Restating the certificate

C. THE BYLAWS

- § 27:19 Nature and purpose
- § 27:20 Power to amend or repeal
- § 27:21 Content
- § 27:22 Model bylaws

D. INITIAL ORGANIZATIONAL CONSIDERATIONS

- § 27:23 Corporate seal
- § 27:24 Organizational meetings
- First meeting of directors § 27:25
- § 27:26 Model call of organizational meeting of directors
- § 27:27 Model waiver of notice of organizational meeting of directors
- § 27:28 Model minutes of organizational meeting of directors
- § 27:29 Issuance of shares
- Model common stock certificate § 27:30
- Uncertificated shares § 27:31
- § 27:32 Opening a bank account

CHAPTER 28. FINANCIAL AND TAX **MATTERS**

A. OBTAINING INITIAL FINANCING

§ 28:1 Subscription agreements

§ 28:2 Model subscription agreement

B. ISSUING SHARES AND CHOOSING A CAPITAL STRUCTURE

§ 28:3	Financing a closely held corporation
§ 28:4	Choosing between debt and equity
§ 28:5	Classes of equity securities
§ 28:6	Model statement of resolution establishing series of shares
§ 28:7	Requirements for the issuance of shares
§ 28:8	Preemptive rights
§ 28:9	Par value, stated capital, and surplus
§ 28:10	Treasury shares

C. TAX CONSIDERATIONS

§ 28:11	The tax treatment of debt financing
§ 28:12	Contributing property for stock
§ 28:13	Section 1244 stock
§ 28:14	Subchapter S corporations

D. DISTRIBUTIONS

§ 28:15	The definition of a "distribution"
§ 28:16	Limitations on distributions
§ 28:17	Share repurchases
§ 28:18	Redemptions
§ 28:19	Share dividends
§ 28:20	The record date for distributions
§ 28:21	Liability for wrongful distributions

CHAPTER 29. PIERCING THE CORPORATE VEIL.

)
ctrine

CHAPTER 30. THE CLOSE CORPORATION

A. THE PROBLEM OF THE CLOSE CORPORATION

§ 30:1 The traditional model of the corporation

§ 30:2	The '	traditional	model	applied	to	close	corporations

B.	SHAREHOLDERS' V	OTING	AGREEMENTS

- § 30:3 Nature and requirements
- § 30:4 Handling disagreement
- § 30:5 Enforcement
- § 30:6 Model shareholders' voting agreement

C. VOTING TRUSTS

- § 30:7 Nature and requirements
- § 30:8 Legitimate and illegitimate purposes
- § 30:9 Powers and duties of trustees
- § 30:10 Rights of beneficiaries and other shareholders
- § 30:11 Model voting trust agreement

D. IRREVOCABLE PROXIES

- § 30:12 Requirements for validity
- § 30:13 Enforcement

E. SHARE TRANSFER RESTRICTIONS

- § 30:14 Nature and requirements
- § 30:15 Reasonableness
- § 30:16 Duration
- § 30:17 Enforcement
- § 30:18 To whom should restrictions run?
- § 30:19 Checklist
- § 30:20 Model option agreement
- § 30:21 Model bylaw provision
- § 30:22 Model statement of filing restrictions for public record

F. MINORITY PROTECTION MECHANISMS

- § 30:23 Shareholders' agreements
- § 30:24 Classes of shares
- § 30:25 Supermajority quorum and voting requirements
- § 30:26 Cumulative voting and preemptive rights

G. THE STATUTORY CLOSE CORPORATION

- § 30:27 Formation
- § 30:28 Shareholders' agreements
- § 30:29 Protection against veil piercing
- § 30:30 Judicial proceedings

O	0001	m ·	
ð	30:31	Termin	nation
- 8	00.01	10111111	iauioi.

U	DISSE	MOTON		DEADI	OCK
п.	DISSE	NOIUN	AIND	DEADL	JUUN

§ 30:32	Shareholder oppression
§ 30:33	Advance planning to avoid dissension and deadlock
§ 30:34	Model standby trust to prevent deadlock
§ 30:35	Model agreement to resolve deadlock
§ 30:36	Model agreement giving option to wind up and terminate
_	close corporation
§ 30:37	Arbitration
8 30.38	Receivership and liquidation

I. CONCLUSION

§ 30:39 A checklist for the Texas close corporation

CHAPTER 31. SHAREHOLDERS' MEETINGS

A. PROCEDURAL PREREQUISITES

§ 31:1	Introduction
§ 31:2	Annual meetings
§ 31:3	Model notice of annual meeting
§ 31:4	Special meetings
§ 31:5	Model notice of special meeting
§ 31:6	Model call of special meeting by shareholder
§ 31:7	Waiver of notice
§ 31:8	Model waiver of notice
§ 31:9	Shareholder meeting list
§ 31:10	Interference with the shareholder franchise

B. SHAREHOLDER ELIGIBILITY TO VOTE

§ 31:11	In general
§ 31:12	Date on which eligibility is determined
§ 31:13	Capacity to vote

C. CONDUCTING THE MEETING

§ 31:14	Basic rules and procedures
§ 31:15	Presence of nonshareholders
§ 31:16	Model minutes of meeting
§ 31:17	Telephonic and remote communication meetings

D. DISPENSING WITH A MEETING

§ 31:18 Shareholder action without a meeting

§ 31:19	Model shareholder unanimous consent form
§ 31:20	Model shareholder majority consent form

E. THE ELECTION AND REMOVAL OF DIRECTORS

§ 31:21	Introduction
§ 31:22	Straight vs. cumulative voting

- § 31:23 Model ballot for straight voting
- § 31:24 Model ballot for cumulative voting
- § 31:25 Devices that minimize the effect of cumulative voting
- § 31:26 Power to remove directors
- § 31:27 Model resolution removing a director

F. CONFIRMING AND CHALLENGING THE ELECTION RESULTS

- § 31:28 Election inspectors
- § 31:29 Judicial review of elections

G. SHAREHOLDER RATIFICATION

- § 31:30 Approval or disapproval of corporate operations
- § 31:31 Model resolution ratifying a transaction

H. SPECIAL VOTING RULES

- § 31:32 Approval of fundamental corporate changes
- § 31:33 Class voting on fundamental changes

CHAPTER 32. THE PROXY SYSTEM

A. INTRODUCTION

§ 32:1 Sources of law relating to proxy regulation

B. STATE REGULATION

- § 32:2 Legal requisites for proxies under state law
- § 32:3 Duration, revocability, and enforceability
- § 32:4 Model proxy for a specific meeting
- § 32:5 Model proxy for specific action
- § 32:6 Model general proxy

C. FEDERAL SECURITIES REGULATION

- § 32:7 Scope of federal proxy regulation
- § 32:8 Federal disclosure requirements in proxy solicitations

Business Organizations

	DUSINESS ORGA
§ 32:9	Model proxy meeting SEC requirements
§ 32:10	Shareholder proposals
§ 32:11	Private actions for violations of federal proxy rules
D. CO	ONCLUSION
8 32.12	Proxy contests and management control of the large

CHAPTER 33. INSPECTION OF BOOKS AND RECORDS

A. INTRODUCTION

corporation

§ 33:1	The historical context
§ 33:2	Information that must be preserved
§ 33:3	The Texas franchise tax public information report

B. INSPECTION RIGHTS OF NONSHAREHOLDERS

§ 33:4	Inspection rights of directors
§ 33:5	Inspection rights of public officials

C. INSPECTION RIGHTS OF SHAREHOLDERS

§ 33:6	The statutory scheme
§ 33:7	Who has the burden of proving a proper purpose?
§ 33:8	What is a proper purpose?
§ 33:9	Procedural questions
§ 33:10	Model demand for leave to examine books and records
§ 33:11	The shareholder meeting list
§ 33:12	Model demand for leave to examine shareholder list
§ 33:13	Other statutory rights of inspection
§ 33:14	Judicial enforcement
§ 33:15	Model petition for writ of mandamus
§ 33:16	Model mandamus order

Volume 20A

CHAPTER 34. THE BOARD OF DIRECTORS

A. COMPOSITION OF THE BOARD

§ 34:1	Number and qualification of directors
§ 34:2	Term of office and classification

§ 34:3	Removal and resignation of directors
§ 34:4	Filling of vacancies
0015	TT 11 1: 4

§ 34:5 Hold-over directors

§ 34:6 De facto directors

B. BENEFITS AND BURDENS OF DIRECTORSHIPS

8	34:7	Compens	otion	α f	directors
8	34:7	Compens	ation	OI	airectors

§ 34:8 Liabilities of directors

C. BOARD MEETINGS

§ 34:9	Mogoggitzz	for formal	action
Q 34:9	Necessity	ior iormai	action

- § 34:10 Action by written consent
- § 34:11 Model written consent
- § 34:12 Regular and special meetings
- § 34:13 Notice, time, place, and call of meetings
- § 34:14 Quorum, voting, agenda, and minutes
- § 34:15 Telephonic and remote communication meetings
- § 34:16 Model notice of regular or special meeting
- § 34:17 Model minutes of regular meeting
- § 34:18 Model minutes of special meeting
- § 34:19 Waiver of notice
- § 34:20 Dissent to action taken at a meeting

D. DELEGATION OF BOARD POWERS

§ 34:21 Committees of the board

CHAPTER 35. OFFICERS AND AGENTS

A. COMMENCEMENT AND TERMINATION OF STATUS

- § 35:1 Creation of corporate officers and agents
- § 35:2 Tenure of officers and agents
- § 35:3 Long-term employment contracts
- § 35:4 Resignation of officers and agents

B. AUTHORITY TO BIND THE CORPORATION

- § 35:5 Introduction
- § 35:6 Express actual authority
- § 35:7 Model certification of resolution granting express authority
- § 35:8 Implied and apparent authority
- § 35:9 Authority from position
- § 35:10 Ratification, estoppel, and unjust enrichment

ξ	35:11	Imputation	of	knowledge	to	the	corporation

C. LIABILITY OF OFFICERS AND AGENTS

- § 35:12 Liability to the corporation
- § 35:13 Liability to third parties

CHAPTER 36. DUTIES OF DIRECTORS, OFFICERS, AND CONTROLLING SHAREHOLDERS

A. INTRODUCTION

- § 36:1 Fiduciary duties
- § 36:2 Sources of law

B. THE DUTY OF CARE

- § 36:3 Content and application of the duty
- § 36:4 Reliance on information prepared by others
- § 36:5 The business judgment rule

C. THE DUTY OF LOYALTY

- § 36:6 Introduction
- § 36:7 Self dealing
- § 36:8 Executive compensation
- § 36:9 Corporate opportunities and unfair competition
- § 36:10 Model resolution authorizing transaction

D. OTHER DUTIES

- § 36:11 The duty to act lawfully
- § 36:12 Liability for making unlawful distributions
- § 36:13 Liability to creditors
- § 36:14 Duties of controlling shareholders

E. TAKEOVER DEFENSE

- § 36:15 The common law
- § 36:16 Moratorium on certain affiliated business combinations

F. PROTECTION AGAINST LIABILITY

- § 36:17 Indemnification by the corporation
- § 36:18 Insurance against liability

CHAPTER 37. DUTIES IN CONNECTION WITH THE TRADING OF SHARES

- § 37:1 Introduction
- § 37:2 The common law
- § 37:3 Rule 10b-5
- § 37:4 Section 16(b)
- § 37:5 The Sarbanes-Oxley Act

CHAPTER 38. DISTRIBUTION OF CORPORATE SECURITIES

A. INTRODUCTION

§ 38:1 Raising capital and "going public"

B. FEDERAL REGULATION

- § 38:2 Jurisdictional requirements
- § 38:3 The definition of a "security"
- § 38:4 Exemptions from registration
- § 38:5 The registration framework
- § 38:6 Remedies
- § 38:7 Model investment letter regarding sale of unregistered securities
- § 38:8 Model investment letter regarding intrastate offerings
- § 38:9 Model restrictive certificate notation
- § 38:10 Federal preemption of state regulation

C. STATE REGULATION

- § 38:11 Registration of dealers and offerings
- § 38:12 Exemptions from state regulation
- § 38:13 Remedies

CHAPTER 39. LITIGATION INVOLVING TEXAS CORPORATIONS

A. BRINGING SUIT AGAINST TEXAS CORPORATIONS

- § 39:1 Service of process on a domestic corporation
- § 39:2 Model jurisdictional allegations
- § 39:3 Denial of allegation of incorporation
- § 39:4 Venue of suits against domestic corporations
- § 39:5 Evidence and proof

B. DERIVATIVE SUITS

§ 39:6	Introduction
§ 39:7	The distinction between derivative and individual claims
§ 39:8	Demand on the corporation
§ 39:9	Contemporaneous ownership
§ 39:10	Adequate representation
§ 39:11	Defenses
§ 39:12	Settlement
§ 39:13	To whom recovery is paid?
§ 39:14	Payment of expenses
§ 39:15	Reimbursement of plaintiff's expenses
§ 39:16	Special procedural problems
§ 39:17	Res judicata impact
§ 39:18	Indemnification of directors
§ 39:19	Closely held corporations
§ 39:20	Foreign corporations
§ 39:21	Derivative litigation in federal court

CHAPTER 40. BUSINESS COMBINATIONS

A. MERGERS

§ 40:1 Statutory mergers
§ 40:2 Holding-company mergers
§ 40:3 Short-form mergers
§ 40:4 Small-scale mergers

B. OTHER BUSINESS COMBINATION METHODS

- § 40:5 Interest exchanges
- § 40:6 Conversions
- § 40:7 Sale of all or substantially all of a corporation's assets
- § 40:8 Nonstatutory combinations

C. JUDICIAL REVIEW

- § 40:9 Freeze-out transactions
- § 40:10 De facto mergers

D. FINANCIAL MATTERS

- § 40:11 Tax considerations
- § 40:12 Accounting considerations

E. THE RIGHT OF DISSENT AND APPRAISAL

 $\S 40:13$ Transactions giving the right to an appraisal

- § 40:14 Required procedures
 § 40:15 Determination of fair value
 § 40:16 Status of shares during appraisal
- § 40:17 Exclusivity of the appraisal remedy

CHAPTER 41. WINDING UP AND TERMINATION

A. VOLUNTARY WINDING UP AND TERMINATION

- § 41:1 Expiration of fixed corporate life
- § 41:2 Approval of winding up a corporation's business and affairs
- § 41:3 Winding up a corporation's business and affairs
- § 41:4 The certificate of termination
- § 41:5 Revocation of voluntary winding up and reinstatement
- § 41:6 Equitable limitations on the right to terminate a corporation's existence
- § 41:7 Tax treatment of liquidating distributions

B. INVOLUNTARY WINDING UP AND TERMINATION

- § 41:8 Administrative termination by the Secretary of State
- § 41:9 Judicial termination on application of the Attorney General
- § 41:10 Termination for failure to pay franchise taxes
- § 41:11 Receivership and termination at the request of a shareholder or creditor
- § 41:12 Model allegations in petition for appointment of receiver

C. POST-TERMINATION MATTERS

- § 41:13 Missing creditors and shareholders
- § 41:14 Continued existence after termination for specified purposes

CHAPTER 42. FOREIGN CORPORATIONS

A. CORPORATIONS THAT ARE NOT PLANNING TO TRANSACT BUSINESS IN TEXAS

§ 42:1 Name registration

B. REQUIREMENTS FOR CORPORATIONS DESIRING TO TRANSACT BUSINESS IN TEXAS

- § 42:2 "Transacting Business" in Texas
- § 42:3 Registering to transact business in Texas

BUSINESS ORGANIZATIONS

- § 42:4 Sanctions for transacting business in Texas without registration Name requirements § 42:5
- Registered office and registered agent § 42:6
- Franchise taxes § 42:7

C. LITIGATION ISSUES

- § 42:8 Long-arm jurisdiction
- § 42:9 Service of process
- § 42:10 Venue
- § 42:11 Choice of law

D. TERMINATION OF REGISTRATION

- Withdrawal of registration
- § 42:13 Revocation of registration

Table of Laws and Rules

Table of Cases

Index