

Texas Business Organizations Entities and Sole Proprietorships

1) Sole Proprietorship

- a) This is an individual person, not an entity
- b) The individual holds title to real estate and is responsible as they would be otherwise for debts & liens affecting such real estate
- c) The individual may do business under a d/b/a (assumed name) by filing a Certificate of Assumed Name with the local County Clerk in each county where the person maintains a business or professional premises or conducts a business or professional service
- d) Documents reflecting a d/b/a should reflect the sole proprietor as “NAME, d/b/a NAME OF BUSINESS”
- e) Statutory reference: Chapter 71, Texas Business and Commerce Code
- f) Underwriting Requirements:
 - i) Agents should conduct a general search against the names of the individual and the d/b/a
 - ii) Agents should consider property titled in an individual operating under an assumed name as being titled in the individual, and therefore should review the record accordingly for requirements as to homestead, community property, and liens.

2) Corporation

- a) An entity is created by filing Articles of Incorporation with the Texas Secretary of State
- b) Entity name must specify it as a corporation by including “company”, “corporation”, “incorporated”, “limited”, or an abbreviation of one of those words
- c) Typical structure includes a board of directors, elected annually by shareholders, & meeting annually to elect officers
- d) Officers are authorized to act on behalf of the corporation in various capacities
- e) Bylaws govern operation of the corporation
- f) Corporation doing business under a d/b/a (assumed name)
 - i) Must file a Certificate of Assumed Name with the county clerk for the county where its principal office is located, and with the Texas Secretary of State
 - ii) Assumed name must be a name other than the name stated in the corporation’s certificate of formation or similar document
- g) Underwriting Requirements:
 - i) Agents must obtain a certificate of good standing for the corporation from the Texas Comptroller’s Office, available here: <https://ourcpa.cpa.state.tx.us/coa/Index.html>
 - ii) Agents must obtain a corporate resolution authorizing the transaction and designating the individual(s) that may act on behalf of the corporation in the transaction

- iii) Agents should review articles of incorporation and bylaws of the corporation to verify authority of the individual(s) named in the corporate resolution supporting the transaction
- iv) Tax liens, Abstracts of Judgment, child support liens, etc, that are specifically against an individual that may also be a shareholder, officer or Board member of the corporation, do not attach to real estate owned by the corporation. However, if a corporation is family owned, has only a single shareholder or otherwise used fraudulently to hide assets from creditors or lawsuits, a suit maybe brought to “pierce the corporate veil” which when ordered by a court, essentially dissolves the corporation and makes the involved individuals and the assets of the corporation liable for the subject debts.

3) Foreign Corporation

- a) Corporations formed in states of the United States other than Texas
- b) In most cases, must register with the Texas Secretary of State in order to transact business in Texas (see Section 9.001 et seq., Texas Business Organizations Code)
- c) “Transacting business” does not include simply owning real estate, or creating a lien or security interest in real estate as borrower or lender (see Section 9.251, Texas Business Organizations Code)
- d) Underwriting Requirements:
 - i) See Corporation, above
 - ii) Agents should not be concerned with whether or not the foreign corporation is registered with the Texas Secretary of State; however such assessment may be a requirement of a lender involved.

4) Alien Corporation

- a) A corporation formed in a country other than the United States
- b) Underwriting Requirements:
 - i) Agent must obtain a copy of the certificate or articles of incorporation, or equivalent
 - ii) Agent must obtain a suitable corporate resolution authorizing the transaction and designating the individual(s) that may act on behalf of the corporation in the transaction
 - iii) Agent must obtain a satisfactory opinion of an attorney qualified to offer opinions as to foreign corporate law governing the corporation; the opinion should include the following elements:
 - (1) The corporation was validly created under the laws of the country or province where it was formed
 - (2) The corporation is in good standing in the country where it was formed
 - (3) The corporation has the authority to enter into the insured transaction
 - (4) The designated individual(s) to act on behalf of the corporation are duly authorized to do so

5) Limited Liability Company (LLC)

- a) Created by filing Certificate of Formation with the Texas Secretary of State
 - i) Typically specifies whether the LLC will be managed by members or manager
 - ii) Should identify initial member(s) of the LLC; must have at least one member
 - iii) Should identify manager, if any; manager need not be a member
 - iv) LLC's may also have been created by filing of Articles of Organization
- b) Name must include "limited liability company", "limited company", or an abbreviation of those
- c) Company agreement a/k/a operating agreement governs operation of the LLC
 - i) May only be modified by all members of the LLC unless otherwise provided
 - ii) May be amended to increase or decrease number of managers
- d) Statutory reference: Chapter 101, Texas Business Organizations Code
- e) Underwriting requirements:
 - i) Agents must obtain a certificate of good standing for the LLC from the Texas Comptroller's Office
 - ii) Agents must obtain a corporate resolution authorizing the transaction and designating the individual(s) that may act on behalf of the LLC in the transaction
 - iii) Agents should review the certificate of formation or articles of organization together with the operating agreement to determine management authority

6) Series LLC

- a) Created by provision in an LLC's company agreement allowing for a designated series of members, managers, membership interests, or assets
 - i) Designated series must have separate rights, powers or duties with respect to specified property or obligations of the LLC, or with respect to profits/losses associated with specified property or obligations
 - ii) Designated series must have a separate business purpose or investment objective
- b) Debts, liabilities, obligations and expenses for a particular series are enforceable only against assets of that particular series, provided records reflect (may be by list, category, quantity or formula) and such limits are stated in the company agreement and certificate of formation
- c) Assets of a series may be held in the name of the series, in the name of the LLC, or through a nominee
- d) Each series may:
 - i) Sue and be sued
 - ii) Contract
 - iii) Hold title to assets, including real property, personal property & intangibles
 - iv) Grant liens and security interests in assets of the series

- e) Management of series
 - i) By managers or members as set out in company agreement
 - ii) If not set out, will be by manager(s) associated with the series or member(s) associated with the series, depending on whether LLC is managed by member(s) or manager(s)
- f) Winding up – series may be wound up without winding up the LLC unless company agreement provides otherwise
- g) Preferable to title real estate held be a series as either “ABC, LLC – Series XYZ” or “XYZ, a Series of ABC, LLC”
- h) Foreign series LLC’s must provide supplemental information in registration with the Texas Secretary of State (see Section 9.005, Texas Business Organizations Code)
- i) Statutory reference: Section 101.601 et seq., Texas Business Organizations Code
- j) Underwriting Requirements:
 - i) See Limited Liability Company, above
 - ii) Conveyances should reflect title as set forth in (g), above
 - iii) The Series LLC concept is relatively new in Texas law. Call underwriting to approve format to insure any policy involving a Series LLC.

7) Joint Venture

- a) Typically a joint association of two or more persons assembled to carry out a single transaction. A joint venture is a general partnership under the law.
- b) Established by mutual agreement
- c) Venture parties are jointly, severally and individually liable for JV assets
- d) Preferable for title that real estate be held by JV as “Name and Name, doing business as X Venture, a Joint Venture” or “X Venture, a Joint Venture composed of Name and Name” Title may be held in just “X Venture” or “X Venture, JV” but more scrutiny will be required – see below.
- e) Underwriting Requirements:
 - i) May also hold title as “X Venture, J.V.” or “X Venture, Joint Venture” but such vesting will require anyone dealing with the asset to obtain a copy of the Joint Venture agreement to establish parties to the JV and supporting affidavit(s) verifying parties to the JV
 - ii) All parties to the JV must join in conveyances unless otherwise designated by written agreement
 - iii) Agents should run a general name search against each party to the JV
 - iv) Abstracted Judgments (AJ), liens and lis pendens affecting any of the joint venture parties should be construed as affecting JV property
 - v) Agents should obtain a copy of the JV agreement to verify terms and parties to complete the transaction.

8) General Partnership

- a) Established by mutual agreement, written or oral
- b) Generally defined as “an association of two or more persons to carry on a business for profit as owners” (Section 152.051, Texas Business Organizations Code)
- c) Determination of whether a partnership is created is governed by factors set forth in Section 152.052, Texas Business Organizations Code
- d) Partnership property is not property of the partners, and partners’ spouses hold no interest in partnership property (Section 152.101, Texas Business Organizations Code)
 - i) Property becomes partnership property if acquired in either
 - (1) The name of the partnership, or
 - (2) The name of one or more partners, when the conveyance indicates the grantee’s capacity as a partner or the existence of a partnership (Section 152.102, Texas Business Organizations Code)
- e) All partners are jointly, severally and individually liable for all partnership assets/debts.
- f) Underwriting Requirements:
 - i) All parties to GP must join in conveyances unless otherwise designated by written agreement
 - ii) Agents should run a general name search against each partner
 - iii) Judgment liens and state tax liens against a partner are not liens against partnership property unless arising from a partnership debt
 - iv) Agents should obtain a copy of the partnership agreement to verify terms and parties
 - v) Agents should contact Texas underwriting counsel for further requirements in the event that all partners will not join in a transaction or if there are liens or other encumbrances against any partners.

9) Limited Partnership

- a) Formed by filing a certificate of limited partnership with Secretary of State and execution of a limited partnership agreement by all limited partners
- b) Must have one or more general partner; may be an individual, partnership, corporation or LLC
- c) Name must contain the word “limited” or “limited partnership”, or an abbreviation of either
- d) Underwriting Requirements:
 - i) Agents must obtain a copy of the partnership agreement to verify parties and terms
 - ii) Agents should take care to ensure that execution and acknowledgment of conveyances reflect the partnership structure, typically being a corporate general partner acting on behalf of the LP

10) Professional Association

- a) Created by filing certificate of formation with Texas Secretary of State
- b) An association, not a partnership or corporation, formed for the purpose of providing professional services by medical doctors, optometrists, veterinarians, dentists, chiropractors or licensed mental health professionals
- c) Composed of licensed individuals (not professional organizations)
- d) Underwriting Requirements: Agents should obtain copies of the certificate of formation and governing documents of the association

11) Professional Corporation

- a) Created by filing certificate of formation with Texas Secretary of State
- b) Formed for the purpose of providing a professional service that for-profit or non-profit corporations are prohibited by law from rendering
- c) May not be formed for the purpose of the practice of medicine by a physician, surgeon or other doctors of medicine.
- d) May only be owned, governed or managed by an individual licensed by the State of Texas to practice the same service as the professional corporation, or by a professional organization rendering the same service through professional individuals
- e) Professional services specifically set out in governing statute (Section 301.003, Texas Business Organizations Code) include personal service rendered by an architect, attorney, certified public accountant, dentist, physician (but see (c) immediately above), public accountant or veterinarian
- f) Underwriting Requirements: See Corporations, above

12) Procedural and Rate Rule Issues

- a) P-38 requires that a T-1R policy may only be issued when the insured is a natural person at the date the policy is issued; in all other cases issue T-1 policy
- b) P-57 Additional Insured Endorsement
 - i) May be issued to a family partnership or family corporation solely composed of or owned by members of the insured's family and the insured
 - ii) Agents should contact Texas underwriting counsel for specific requirements
- c) Continuing policy coverage for T-1 policies
 - i) Note definition of "insured" includes as to entities "successors to an Insured by dissolution, merger, consolidation, distribution or reorganization" and "successors to an Insured by its conversion to another kind of Entity"
 - ii) "Insured" may also include a grantee of an Insured under a deed delivered without payment of actual valuable consideration, if:
 - (1) the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured; or
 - (2) the grantee wholly owns the named Insured; or

- (3) the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity