# TABLE OF CONTENTS

## I. TBOC MEETING REQUIREMENTS FOR NONPROFIT CORPORATIONS

A. Meetings of the Governing Board
   1. Required Board Meetings
   2. Notice of Meetings
   3. Quorum for Holding a Meeting
   4. Taking Action at a Meeting
   5. Use of Proxies
   6. Meetings by Telephone and Other Remote Communications Technology

B. Meetings of Members
   1. Annual Membership Meetings
   2. Regular Membership Meetings
   3. Special Membership Meetings
   4. Votes Held Without Membership Meetings
   5. Notice of Membership Meetings
   6. List of Voting Members
   7. Votes Per Member
   8. Quorum for Holding a Membership Meeting
   9. Taking Action at a Meeting
   10. Use of Proxies
   11. Meetings by Telephone and Other Remote Communications Technology
   12. Record Date for Determination of Members
   13. Membership Approval of Fundamental Actions

## II. MINUTES OF MEETINGS

A. Statutory Requirement to Keep Minutes
B. Statutory Right to Inspect Minutes
C. Contents of Minutes
D. Approval of Minutes

## III. BEST PRACTICES FOR CONDUCTING MEETINGS

A. The Meeting Agenda and Board Packet
B. Presiding Officer
C. Secretary of the Meeting
D. Observe Voting Formalities
E. Set and Stick to a Timeframe
F. Consent Agenda
I. TBOC MEETING REQUIREMENTS FOR NONPROFIT CORPORATIONS

The Texas Business Organizations Code ("TBOC") includes default meeting requirements that apply in the absence of contrary provisions in the governing documents of a nonprofit corporation. This portion of the outline explains those default requirements. It is important for the officers and governing board of each nonprofit corporation to review the organization's Certificate of Formation and Bylaws to determine to what extent these default rules may have been altered.

A. Meetings of the Governing Board

The following statutory requirements or default provisions apply to meetings of the governing body of a nonprofit corporation. While that governing body may be designated as a board of directors or board of trustees, this outline will use the term "directors" to refer to members of the governing board.

1. Required Board Meetings

The TBOC does not include a provision expressly requiring a minimum number of meetings of the board of directors. However, unless the Certificate of Formation or Bylaws provides otherwise, directors are to be elected at an annual election and officers are to be elected annually, thereby necessitating at least one meeting each year. TBOC §§ 22.208(b) and 22.232(b).

2. Notice of Meetings

Regular meetings of the board of directors may be held with or without notice as prescribed by the corporation's bylaws. Special meetings of the board of directors shall be held with notice as prescribed by the bylaws. TBOC § 22.217(a)&(b).

Unless required by the bylaws, the business to be transacted at, or the purpose of, a regular or special meeting of the board of directors is not required to be specified in the notice or waiver of notice of the meeting. TBOC § 22.217(c).

Attendance of a director at a meeting constitutes a waiver of notice, unless the director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. TBOC § 22.217(b).

Notice may be delivered in the manner provided for in the Certificate of Formation or Bylaws of the corporation. If not so provided, notice may be given personally, by U.S. mail, by facsimile, or by electronic message. If delivered by U.S. mail, notice is considered to be given when deposited in the U.S. mail with postage paid in an envelope addressed to the director at the director's address as it appears on the records of the corporation. If delivered by facsimile or electronic message, notice is considered to be given when the message is delivered by facsimile or electronic message to a facsimile number or electronic message address provided to the corporation by the director or to which the director has consented. TBOC §§ 22.217(d) and 6.051(b).

3. Quorum for Holding a Meeting

Directors may transact business at a meeting only if a quorum of directors is present at the meeting. The required minimum number of directors for a quorum is the lesser of (a) the majority of the number of directors set by the corporation's bylaws or, in the absence of a bylaw setting the number of directors, a majority of the number of directors stated in the corporation's certificate of formation, or (b) any number, not less than three, set as a quorum by the certificate of formation or bylaws. TBOC § 22.213(a).

A director present by proxy at a meeting may not be counted toward a quorum. TBOC § 22.213(b).

Directors participating in a meeting through the use of telephones or other electronic means are counted as being present at the meeting.

4. Taking Action at a Meeting

The act of a majority of the directors present in person or by proxy at a meeting at which a quorum is present is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation. TBOC § 22.214.

5. Use of Proxies

A director of a corporation may vote in person or, if authorized by the certificate of formation or bylaws of the corporation, by proxy executed in writing by the director. TBOC § 22.215.

A proxy expires three months after the date the proxy is executed and is revocable unless otherwise provided by the proxy or made irrevocable by law. TBOC § 22.216.

6. Meetings by Telephone and Other Remote Communications Technology

Subject to the provisions of the TBOC and the Certificate of Formation and Bylaws of a corporation, a meeting of the board of directors may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, but only if (a) each person entitled to participate in the meeting consents to the meeting being held by means of that system, and (b) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate.
concurrently with each other participant. TBOC § 22.002.

B. Meetings of Members
The following statutory requirements or default provisions apply to meetings of the members of a Texas nonprofit corporation.

1. Annual Membership Meetings
   If the Bylaws provide for more than one regular meeting of members each year, an annual meeting is not required. Otherwise, a corporation shall hold an annual meeting of the members at a time that is stated in or determined in accordance with the corporation's Bylaws. TBOC § 22.153.

   If the board of directors of a corporation fails to call the annual meeting of members when required, a member of the corporation may demand that the meeting be held within a reasonable time. The demand must be made in writing and sent to an officer of the corporation by registered mail. If a required annual meeting is not called before the 61st day after the date of demand, a member of the corporation may compel the holding of the meeting by legal action directed against the board of directors, and each of the extraordinary writs of common law and of courts of equity are available to the member to compel the holding of the meeting. Each member has a justiciable interest sufficient to enable the member to institute and prosecute the legal proceedings. TBOC § 22.154(a)&(b).

   Failure to hold a required annual meeting at the designated time does not result in the winding up and termination of the corporation. TBOC § 22.154(c).

2. Regular Membership Meetings
   The annual meeting of the members is considered a regular membership meeting. The Bylaws may provide for additional regular membership meetings. TBOC § 22.153.

3. Special Membership Meetings
   A special meeting of the members of a corporation may be called by the president, the board of directors, members having not less than one-tenth of the votes entitled to be cast at the meeting, or other officers or persons as provided by the certificate of formation or bylaws of the corporation. TBOC § 22.155.

4. Votes Held Without Membership Meetings
   If authorized by the certificate of formation or bylaws of the corporation, a member vote on any matter may be conducted by mail, by facsimile transmission, by electronic message, or by any combination of those methods. TBOC § 22.160(d).

5. Notice of Membership Meetings
   A corporation other than a church shall provide written notice of the place, date, and time of a meeting of the members of the corporation and, if the meeting is a special meeting, the purpose or purposes for which the meeting is called. The notice shall be delivered to each member entitled to vote at the meeting not later than the 10th day and not earlier than the 60th day before the date of the meeting. TBOC § 22.156(a).

   Notice of membership meetings for a corporation other than a church may be delivered in the manner provided for in the Certificate of Formation or Bylaws of the corporation. If not so provided, notice may be given personally, by U.S. mail, by facsimile, or by electronic message. If delivered by U.S. mail, notice is considered to be given when deposited in the U.S. mail with postage paid in an envelope addressed to the member at the member’s address as it appears on the records of the corporation. If delivered by facsimile or electronic message, notice is considered to be given when the message is delivered by facsimile or electronic message to a facsimile number or electronic message address provided to the corporation by the member or to which the member has consented. TBOC §§ 22.156(a) and 6.051(b).

   Notice of a meeting of the members of a corporation that is a church is sufficient if given by oral announcement at a regularly scheduled worship service before the meeting or as otherwise provided by the Certificate of Formation or Bylaws of the corporation. TBOC § 22.156(b).

   A corporation may provide in the corporation's bylaws that notice of an annual or regular meeting is not required. TBOC § 22.157(a).

   A corporation having more than 1,000 members at the time a meeting is scheduled or called may provide notice of a meeting by publication in a newspaper of general circulation in the community in which the principal office of the corporation is located, if the corporation provides for that notice in its bylaws. TBOC § 22.157(b).

6. List of Voting Members
   After setting a record date for the notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its voting members. The list must identify: the members who are entitled to notice and the members who are not entitled to notice of the meeting; the address of each voting member; and the number of votes each voting member is entitled to cast at the meeting. TBOC § 22.158(a).

   Not later than the second business day after the date notice is given of a meeting for which a list of voting members was prepared, and continuing through the meeting, the list of voting members must be available at the corporation's principal office or at a reasonable place in the municipality in which the
meeting will be held, as identified in the notice of the meeting, for inspection by members entitled to vote at the meeting for the purpose of communication with other members concerning the meeting. TBOC § 22.158(b).

A voting member or voting member's agent or attorney is entitled on written demand to inspect and, at the member's expense and for a proper purpose, copy the list at a reasonable time during the period the list is available for inspection. TBOC §§ 22.158(c) and 22.351.

The corporation shall make the list of voting members available at the meeting. A voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or an adjournment of the meeting. TBOC § 22.158(d).

7. Votes Per Member
Each member of a corporation, regardless of class, is entitled to one vote on each matter submitted to a vote of the corporation's members, except to the extent that the voting rights of members of a class are limited, enlarged, or denied by the Certificate of Formation or Bylaws of the corporation. TBOC § 22.160(a).

8. Quorum for Holding a Membership Meeting
Members may transact business at a meeting only if a quorum of members is present at the meeting. Unless otherwise provided by the Certificate of Formation or Bylaws, members holding one-tenth of the votes entitled to be cast, in person or by proxy, constitute a quorum. TBOC § 22.159(a).

Unless otherwise provided by the Certificate of Formation or Bylaws, a church incorporated before May 12, 1959, is considered to have provided in the Certificate of Formation or Bylaws that any number of members present at a meeting for which notice has been given constitutes a quorum. TBOC § 22.160(b).

9. Taking Action at a Meeting
The vote of the majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present is the act of the members meeting, unless the vote of a greater number is required by law or the Certificate of Formation or Bylaws. TBOC § 22.159(b).

10. Use of Proxies
A member may vote in person or, unless otherwise provided by the certificate of formation or bylaws, by proxy executed in writing by the member or the member's attorney-in-fact. TBOC § 22.160(b).

Unless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution. A proxy may not be irrevocable for longer than 11 months. TBOC § 22.160(c).

11. Meetings by Telephone and Other Remote Communications Technology
Subject to the provisions of the TBOC and the Certificate of Formation and Bylaws of a corporation, a meeting of the members may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, but only if (a) each person entitled to participate in the meeting consents to the meeting being held by means of that system, and (b) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant. TBOC § 22.002.

12. Record Date for Determination of Members
Subject to the TBOC, the governing documents of a nonprofit corporation may provide the record date, or the manner of determining the record date, for determining the members of the entity entitled to receive notice of or vote at a meeting of the members. TBOC § 6.101(a).

Subject to the TBOC and the governing documents of a nonprofit corporation, the board of directors of the entity, in advance, may provide a record date for determining the members of the entity, except that the date may not be earlier than the 60th day before the date the action requiring the determination of members is taken. TBOC § 6.101(b).

Subject to the TBOC and the governing documents of a nonprofit corporation, the board of directors of the entity may provide for the closing of the membership transfer records of the entity for a period of not longer than 60 days to determine the members of the entity for a purpose described above. TBOC § 6.101(c).

If the members of a nonprofit corporation are not otherwise determined under TBOC § 6.101 as provided above, (a) members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting, (b) members at the close of business on the business day preceding the date notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of a meeting of members; and (c) members at the close of business on the later of the day the board of directors adopts the resolution relating to the action or the 60th day before the date of the action are entitled to exercise any rights regarding any other lawful action. TBOC § 22.163(b).

The record date for the determination of members entitled to notice of or to vote at a meeting is effective for an adjournment of the meeting unless the board of directors of a corporation sets a new date for determining the right to notice of or to vote at the adjournment. TBOC § 22.163(c).
13. **Membership Approval of Fundamental Actions**

   If a corporation has members with voting rights, or is managed by its members, approval of a fundamental action requires at least two-thirds of the votes cast by members present in person or by proxy at a meeting at which the fundamental action is submitted for a vote. TBOC § 22.164(b).

   Fundamental actions include an amendment of the Certificate of Formation, a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of the voluntary decision to wind up, a distribution plan, a plan of merger, a conversion, an exchange, and a sale or all or substantially all of the corporation’s assets. TBOC § 22.164(a).

   If the members are asked to approve a merger or a sale of all or substantially all of the corporation’s assets, the notice of the meeting must state that a purpose of the meeting is to consider such proposed action. If the proposed action is a merger, the notice must include a copy of the plan of merger or a summary of such plan of merger. TBOC § 22.253.

   If the members are asked to approve a winding up, reinstatement, cancellation of event requiring winding up, revocation of the voluntary decision to wind up, or distribution plan, the notice of the meeting must state that a purpose of the meeting is to consider such proposed action. If the proposed action is a distribution plan, the notice must include a copy of the distribution plan or a summary of such plan. TBOC § 22.303.

II. **MINUTES OF MEETINGS**

   Minutes are the official record of the actions taken at a meeting and are evidence of the actions so taken. See, e.g., City of Hughes Springs v. Hughes Springs Volunteer Ambulance Service, Inc., 223 S.W.3d 707 (Tex. App.—Texarkana, 2007).

A. **Statutory Requirement to Keep Minutes**

   Every nonprofit corporation is required to keep minutes of the meetings of its members, of its governing body, and of committees of its members and governing body. TBOC § 3.151(a).

   Minutes may be in written paper form or another form capable of being converted into written paper form within a reasonable time. TBOC § 3.151(b).

B. **Statutory Right to Inspect Minutes**

   Members and directors of a nonprofit corporation have the right to inspect the minutes that are required to be maintained. TBOC §§ 3.152 and 3.153. The Attorney General also has the right to inspect the minutes of a nonprofit corporation. TBOC § 12.151.

C. **Contents of Minutes**

   Minutes should include the actions considered and discussed at the meeting, the decisions made and actions taken at the meeting, and the persons in attendance and voting at the meeting. In the event that a conflict of interest is addressed at a meeting, the Bylaws or Conflict of Interest Policy of a nonprofit corporation may require that the votes of each person be separately recorded in the minutes. Other specific requirements exist for organizations seeking to establish a rebuttable presumption of reasonableness under Section 4958 of the Internal Revenue Code.

   The minutes of a meeting of the board of directors should reflect the dissent of any director who was present at such meeting and dissented to a particular action taken by the board. Absent such dissent being “entered in the minutes of the meeting,” the director is presumed to have assented to the action so taken. TBOC § 22.227.

   Minutes should concisely state the matters addressed or discussed by the board or members, but should not contain a verbatim transcript of such discussion. Minutes should carefully reflect the resolutions considered by the board or members and the results of the votes taken on such resolutions. Many board members feel less comfortable expressing their opinions if they believe that a verbatim transcript of the meeting is being created or kept.

   Important written materials acted upon by the board or members at a meeting should be included as attachments to the minutes of the meeting.

D. **Approval of Minutes**

   Minutes are customarily provided to directors or members before the next meeting of the board or membership. The minutes are customarily approved and ratified by the directors or members, with any changes approved therein, at such next meeting of the board or membership.

III. **BEST PRACTICES FOR CONDUCTING MEETINGS**

   There are any number of ways in which nonprofit board meetings are conducted. Following are some of the best practices that have been noted by experienced professionals and board members.

A. **The Meeting Agenda and Board Packet**

   A well thought-out agenda should be prepared before each board meeting and should be included in a board packet. To the extent possible, the board packet should include any important documents or resolutions the board will consider at the meeting. The board packet should be delivered to all board members far enough in advance so that the board members have a reasonable opportunity to review the board packet. Board members should be encouraged to carefully...
review the board packet before the day of the meeting. Finally, the actual meeting should proceed in accordance with the agenda contained in the board packet.

B. Presiding Officer

A single person should preside at each meeting and should keep the meeting on track. The Bylaws of a nonprofit corporation often designate a specific officer as the person who presides at board meetings. That officer is typically the Chair of the Board, if the corporation has such a position, or the president (or chief executive officer or executive director) of the corporation.

C. Secretary of the Meeting

One individual should serve as the secretary of the meeting. That individual should keep detailed notes of the meeting so that minutes of the meeting can be prepared from such notes. The secretary of the meeting can make an audio recording of the meeting, but should not rely solely on such recording, which may prove after the fact to be inadequate. Any such audio recording that is made should be used to create minutes and then deleted. Audio tapes should not be kept in lieu of creating written minutes of a meeting, nor should a verbatim transcript of such an audio tape serve as the minutes of the meeting.

D. Observe Voting Formalities

The presiding officer should understand and enforce appropriate voting practices. Traditionally, this requires a motion by one board member followed by a second from another board member. It is important that the motion be stated clearly and be recorded carefully by the secretary of the meeting so that all persons understand what is being voted upon. The presiding officer then takes the vote of the full board.

E. Set and Stick to a Timeframe.

The presiding officer should set and stick to a timeframe for the meeting. The presiding officer should allow very few deviations from that timeframe.

F. Consent Agenda.

Some boards include routine reports and routine matters requiring board approval on a so-called consent agenda that is addressed near the beginning of a meeting. Any director can request that such a matter be moved from the consent agenda to the regular agenda, but all matters remaining on the consent agenda are approved in a single vote. The purpose of the consent agenda is to avoid spending board time discussing routine matters about which the entire board is in agreement. Obviously, a consent agenda can be used only if the relevant routine reports and materials are provided in advance to the board so that board members have the opportunity to review them in advance of the meeting.