

# INCORPORATION

The first step any Post must take before it branches into any type of community project, social activity, or financial undertaking is incorporation. Most Posts are already incorporated. The rest should be.

There are two (2) general sets of rules that cover incorporation of a VFW Post — the laws of the individual state and the National By-Laws of the Veterans of Foreign Wars. To be recognized, your incorporation must comply with both and must be submitted to the Commander-in-Chief for review.

In most every Department, incorporation of a Post is a comparatively simple matter since forms which meet requirements of state law and the National VFW are available upon request from Department Headquarters. These guidelines contain a very simple set of instructions on how to fill them out and what to do once they are filled out. In the State of Texas, incorporation costs only \$25.00.

Incorporation is necessary for several purposes. To begin with, in many states the Post must be incorporated before it can hold property in its own name and before any type of liquor or bingo license may be issued to it. Secondly, and perhaps just as important to the officers of the Post, the active incorporation takes individual responsibility away from the Post officers and places it upon the Post itself. The individual officers of an incorporated Post cannot be sued for financial obligations of the Post.

It is the general policy of the National Veterans of Foreign Wars that approval will not be given to separate holding corporations or club corporations. Some of these have been approved in the past and conceivably could be permitted to exist under that approval, but there will be no more in the future.

There is no particular advantage in the pyramiding of corporations. The Post corporation is sufficient to protect all its operations, if those operations are kept under control of the Post.

The general purpose of a separate club corporation or holding corporation is to take control away from the members of the Post. Usually, it has not been done for any dishonest purpose, but in the belief that more efficient operation will result from tighter control by a smaller group of people.

It is the contention of the Veterans of Foreign Wars that sufficient control may be exercised without sacrifice of democratic processes by the adoption of Post By-Laws and Rules.

Any exception to the "no separate corporation" rule may be made in the case of sponsorship of large-scale one-shot activities such as an air show, a community celebration, a Department convention, etc. It is sometimes better in these cases to incorporate the individual activity for ease in obtaining insurance, settling financial obligations, etc. These corporations have a limited existence and are dissolved after their purpose is served.

Posts not incorporated are only asking for trouble.

## **CHANGES:**

Information on changing the Post Registered Agent or Amendments to Post Incorporation papers are on the following pages.



1 The name of the entity is \_\_\_\_\_

The entity's charter/certificate of authority/file number is \_\_\_\_\_

2. The registered office address as **PRESENTLY** shown in the records of the Texas secretary of state is:

\_\_\_\_\_

3. **A.** \_\_\_\_\_ The address of the **NEW** registered office is: (Please provide street address, city, state and zip code.) The address must be in Texas.

\_\_\_\_\_

**OR**

**B.** \_\_\_\_\_ The registered office address will not change.

4. The name of the registered agent as **PRESENTLY** shown in the records of the Texas secretary of state is: \_\_\_\_\_

5. **A.** \_\_\_\_\_ The name of the **NEW** registered agent is: \_\_\_\_\_

**OR**

**B.** \_\_\_\_\_ The registered agent will not change. \_\_\_\_\_

6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.

7. The changes shown above were authorized by:

Business Corporations may *select A or B* Limited Liability Companies may select *D or E*  
Non-Profit Corporations may *select A, B, or C* Limited Partnerships *select F*

A. \_\_\_\_\_ The board of directors; OR

B. \_\_\_\_\_ An officer of the corporation so authorized by the board of directors; OR

C. \_\_\_\_\_ The members of the corporation in whom management of the corporation is vested pursuant to article 2.14C of the Texas Non-Profit Corporation Act.

D. \_\_\_\_\_ Its members

E. \_\_\_\_\_ Its managers

F. \_\_\_\_\_ The limited partnership

\_\_\_\_\_  
(Authorized Officer of Corporation)  
(Authorized Member of Manager of LLC)  
(General Partner of Limited Partnership)

## INSTRUCTIONS FOR FILING STATEMENT OF CHANGE OR REGISTERED OFFICE OR REGISTERED AGENT

1. It is recommended that you call (512) 463-5555 to verify the information in items 2 and 4 as it currently appears on the records of the secretary of state before submitting the statement for filing. If the information on the form is inconsistent with the records of this office, the statement will be returned.
2. You are required by law to provide a street address in item 3 unless the registered office is located in a city with a population of 5,000 or less. The purpose of this requirement is to provide the public with notice of a physical location at which process may be served on the registered agent. A statement submitted with a post office box address only will not be filed.
3. The statement must be signed on behalf of a corporation by an authorized officer of the corporation, on behalf of a limited liability company by an authorized member or manager, and on behalf of a limited partnership by a general partner. **Prior to signing, please read carefully the statements set forth in this document. A person commits an offense under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act or the Texas Liability Company Act if the person signs a document the person knows a false in any material respect with the intent that the document be delivered to the secretary of state for filing.** The offense is a Class A misdemeanor.
4. Please attach the appropriate fee:

|                                  |                |
|----------------------------------|----------------|
| <b>Business Corporation</b>      | <b>\$15.00</b> |
| <b>Non-Profit Corporation</b>    | <b>\$5.00</b>  |
| <b>Limited Liability Company</b> | <b>\$10.00</b> |
| <b>Limited Partnership</b>       | <b>\$50.00</b> |

Checks should be made payable to the secretary of state.

5. Two copies of the form along with the filing fee should be mailed to the address shown in the heading of this form. The delivery address is: Secretary of State, Statutory Filings Division, Corporations Section, James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. We will place one document on record and return a file stamped copy. The phone number is (512) 463-5582, TDD: (800) 735-2989, FAX: (512) 463-5709.
6. Under article 10.03 of the Texas Business Corporation Acts article 10.07 of the Non-Profit Corporation Act, article 9.03 of the Texas Limited Liability Company Act, and section 2.12 of the Texas Revised Limited Partnership Act, an entity may choose to make the filing of certain documents effective as of a date not more than 90 days after the date of filing or upon the accomplished by stating a future effective date or describing a future even within the document submitted for filing. Please refer to the appropriate statute for the specific requirements necessary for filing documents with a future effective date.



## AMENDMENT TO THE ARTICLES OF INCORPORATION OF A TEXAS NON-PROFIT CORPORATION

Articles 4.01 - 4.05 of the Texas Non-Profit Corporation Act govern amendments to the articles of incorporation of non-profit corporations. A corporation may amend its articles of incorporation at any time and in as many respects as may be desired, so long as the articles as amended contain only such provisions as are lawful under the Act. Amendments may be adopted to change the language of an existing article, to add an article or delete an article. **FORMS FOR ARTICLES OF AMENDMENT ARE NOT PROVIDED BY THE OFFICE OF THE SECRETARY OF STATE.** Amendments are adopted in the following manner.

If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment. The resolution is submitted to a vote at a meeting of the members. The proposed amendment is adopted upon receiving the vote of two-thirds of the votes which members present, in person or by proxy, were entitled to cast. In the alternative, amendments may be adopted by the unanimous written consent of the members.

If the corporation has no members or no members with voting rights, the amendment is adopted by a majority vote of the board of directors. In addition, there are certain specific non-substantive amendments which may be adopted by majority vote of the board of directors which has members with voting rights.

Articles of Amendment must contain the following information:

1. The name of the corporation.
2. The amendment:
  - (a) If the amendment changes an existing article, an identification of the article number being changed and a statement of the text of the article as it is amended to read.
  - (b) If the amendment deletes an existing article, an identification of the article number being deleted.
  - (c) If the amendment adds an article, an identification of the new article number and a statement of the article as it will read.

3. If there are members having voting rights:
  - (a) A statement setting forth:
    - (1) the date of the meeting of members at which the amendment was adopted;
    - (2) that a quorum was present; and
    - (3) that the amendment received at least two thirds vote of the members.
  - (a) Or in the alternative, a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote.
  
4. If there are no members, or no members having voting rights, a statement setting forth:
  - (a) that there are no members or no members with voting rights; and
  - (b) the date of the meeting of the board of directors at which the amendment was adopted; and
  - (c) a statement that the amendment received the vote of a majority of directors

The articles must be signed by an authorized officer of the corporation (they do not need to be notarized) and two copies delivered to the secretary of state along with the fee. The filing fee for articles of amendment is \$25.00. We will place one document on file and return a file stamped copy for your records. **Prior to signing, please review carefully the statements set forth in the document. A person commits an offense under the Texas Non-Profit Corporation Act if the person signs a document knowing it is false in any material respect with the intent that the document be delivered to the Secretary of State for filing. The offense is a Class A misdemeanor.**

Tax exempt status under section 501(c) of the Internal Revenue Code is granted by the Internal Revenue Service; any questions concerning procedures or requisite language in organizational documents for tax exemption purposes should be directed to the IRS.

This information is provided by the secretary of state solely to assist you with procedural matters. **THIS OFFICE CANNOT PROVIDE LEGAL ADVISE; WE RECOMMEND THAT YOU CONSULT WITH A PRIVATE ATTORNEY.** If extensive amendments are proposed, the corporation may wish to consider filing restated articles of incorporation pursuant to article 1396-4.06 of the Texas Non-Profit Corporation Act. Forms for restated articles are not provided by this office.

Two copies of the document along with the filing fee should be mailed to the address shown in the heading of this form. The delivery address is James Ear Rudder Office Building, 1019 Brazos, Austin, Texas 78701. We will place one document on record and return a file stamped copy. The telephone number is (512) 463-5555, TDD: (800) 735-2989, FAX: (512) 463-5709.

Form No. 405  
Revised 6/96

The Office of the Secretary of State does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of service.