



## TEXAS DEPARTMENT OF INSURANCE

**Financial Regulation Division - Company Licensing and Registration (103-CL)**

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### How to Incorporate a Texas Insurance Company

The Company Licensing and Registration Office incorporates and licenses insurance companies – this one stop shop process allows us to incorporate Texas insurance companies in a thorough and efficient manner. This Office strives to process all our files within 60 days from date actually received. In order to meet this goal, we request that all applicants promptly respond to our requests.

As a UCAA (Uniform Certificate of Authority Application) member state, we require the filing of a UCAA Primary Application for entities wishing to be incorporated and licensed as a Texas domestic insurance company. For legal references see Texas Insurance Code Chapters 822, 841, 861, 882, and 883.

The Primary Application of the UCAA is designed to provide a more uniform process for the formation of a new insurer. Despite the comprehensive nature of the Primary Application, many of the forms, business plan format, etc., are similar to what an insurer would need to file to be admitted into other states. Primary Applications may be submitted anytime of the year.

#### FILING REQUIREMENTS

Submit a cover letter with the filing summarizing information about the proposed incorporation, what type of insurance it plans to offer in Texas, and the justification for omitting any of the filing requirements listed below. The filing, as set forth in the [UCAA Primary application instructions](#), requires the following:

1. Application Form and Attachments
  - Completed Primary Application Checklist (UCAA Form 1P),
  - Original UCAA Primary Application executed and signed (UCAA Form 2P),
  - Include all lines of insurance applicant is licensed to transact, currently transacting and requesting authority to transact in all jurisdictions (UCAA Form 3)
2. Filing Fee – Submit payment of required filing fee and a copy of the check along with the [Fee Transmittal Form](#) (FIN321). In Texas, the fee is \$1,500.
3. Minimum Capital and Surplus Requirements – Submit explanation of applicant’s compliance with minimum capital and surplus requirements.
  - Property & Casualty company - \$2.5 million in paid-in surplus; \$2.5 million in capital stock
  - Life & Health company - \$700,000 in paid-in surplus; \$700,000 in capital stock
4. Statutory Deposit Requirements – Submit documentation explaining how applicant has met or will meet the statutory deposit requirement. Property & Casualty company - \$50,000; Title insurer - \$100,000.

5. Name Approval – Submit a **Name Application** form (FIN300). Texas requires a name reservation process prior to name approval. The name must not be similar to other licensed companies as to avoid consumer confusion. A \$100 filing fee is required. A proposed life company must have “Insurance Company” in its name.
6. Plan of Operation – Include the completed Questionnaire (UCAA Form 8), Pro Forma financial statements/projections, and a brief narrative. Narrative should include significant information not captured in the questionnaire.
7. Holding Company Form “B” Registration Statement.
8. Statutory Membership(s) – Texas does not have any statutory membership requirements as part of its licensing process.
9. SEC Filings or Consolidated GAAP Financial Statement.
10. Debt-to-Equity Ratio Statement – This ratio allows the department to determine the amount of debt held at a holding company level that will possibly be serviced by revenue from the proposed insurance corporation.
11. Custody Agreements – Include a statement setting forth whether or not any of the applicant's stocks, bonds, or other physical or book entry securities are in the physical possession of another entity. If any of the applicant's stocks, bonds or other securities are not in the applicant's actual physical possession or in a safe deposit box under the exclusive control of the applicant (except as shown in the Schedules of Special and Other Deposits in the applicant's Annual Statement), the application must include a written agreement with each entity holding and/or administering these securities. The written agreement should include appropriate safeguards for the handling of the securities, as specified in the NAIC Financial Examiners' Handbook. See **Appendix** for **Required Provisions for Custodial Agreements**.
12. Public Records Package – An applicant seeking to form a new insurer/corporation should submit proposed Articles of Incorporation, By-laws, affidavits and a balance sheet representing proposed initial capitalization. See **Appendix** for **Articles of Incorporation Requirements** and **Affidavit Requirements**.
13. NAIC Biographical Affidavits and Independent Third Party Verification – Submit for all officers, directors and key managerial personnel of the applicant and individuals with a 10%, or more, beneficial ownership in the applicant and the applicant's ultimate controlling parent ("Affiant"). See **#13** of the NAIC's Filing Requirements. Anyone with a felony conviction involving moral turpitude cannot be an officer or director of an insurance company in Texas.
14. State Specific Information – Fingerprinting is required for each biographical affidavit that is submitted with the application. See **Commissioner's Bulletin #B-0045-06** and **Commissioner's Bulletin #B-0043-07**. For fingerprinting information, also see **Fingerprinting Requirements**, located on the Company Licensing and Registration Office web page. This Office does not accept paper fingerprint cards.

### Liability

The applicant must submit a loss control plan, subsequent to licensing approval but prior to writing, if the applicant was granted authority to write auto liability or liability other than auto, and will write any one of the following products:

- Commercial automobile liability insurance
- Professional liability insurance for hospitals
- Professional liability insurance for insureds other than hospitals
- General liability insurance
- Medical liability insurance for insureds other than hospitals

For further information, contact the Loss Control Division at 512-676-6680.

### Worker's Compensation

If applicant is planning to write worker's compensation insurance, contact TDI's Division of Workers' Compensation (TDI-DWC) at 1-800-252-7031 or visit the DWC website at <http://www.tdi.texas.gov/wc/indexwc.html>. Subsequent to licensing approval, but prior to writing worker's compensation insurance, the applicant must file an Accident Prevention Plan to be reviewed by TDI-DWC.

### Variable Life/Variable Annuity

If the applicant is planning to write variable life/annuity, the following must be addressed:

1. A copy and a general description of the variable life/annuity contract.
2. General description of the methods of operation for the variable life/annuity business, including distribution of contracts and the names of firms providing related investment advisory, custodial or distributive services.
3. A statement of investment policy, including but not limited to, a description of the investment objectives intended for the separate account.
4. A statement from an actuary describing the mortality and expense risks which the insurer will bear under contract.
5. Submit formally adopted standards of conduct with respect to the purchase/sale of separate account investments.
6. For insurers seeking approval to enter in variable life business, a written statement specifying standards of suitability to be used by the insurer.
7. All persons with access to assets allocated to separate accounts shall be under bond in the amount of no less than \$100k.

8. In regards to contracting for advisory services (such contracts shall have a 60-day cancellation notice). Contracting entity is registered under 15 USC §§80B-1-80B-21, or under 29 USC §§ 1001, or files with the commissioner, and continues to file:
- Name/form of its organization
  - Principal place of business
  - Names/addresses of its partners, officers, directors
  - Written standard of conduct with respect to the purchase/sale of separate account investments
  - A statement as to whether the advisors or any of its associates:
    - Have within the past 10 years been convicted of embezzlement, etc. or a violation of 18 USC §§1341,1342, or 1343;
    - Have been enjoined by an order from acting as an investment adviser, etc. or as an employee of an investment company, insurer, etc.;
    - Have been found under federal/state regulation to have willfully violated federal/state securities laws/regulations; and
    - Have had their registration denied, revoked, etc. by federal/state regulators.

## CONFIDENTIAL INFORMATION

If an applicant considers any section of the Primary Application to be considered confidential, specifically state which part is considered proprietary and confidential. Most Company Licensing and Registration documents are open record; a determination that any of these documents are a closed record will have to be concluded at the Texas Attorney General's Office.

Information determined to be proprietary and trade secret by law will not be disclosed to the public. Each applicant needs to expressly identify all information in the application and in any subsequent correspondence that the applicant considers proprietary or trade secret.

## REVIEW PROCESS

Once the application is received in Company Licensing and Registration, it is date stamped and assigned to a Company Licensing Specialist. The Specialist will review the application to determine if all required documentation is submitted. Within approximately 10 days, the Specialist will contact the applicant stating that either the filing is acceptable, and the Specialist will begin technical review of the submitted documents, or that the filing is deficient and will request that missing documents be submitted within a specific timeframe.

When technical review of the document begins, the Specialist will review the various forms, Articles of Incorporation, and By-laws for compliance. The operational plan will be reviewed by a Company Licensing Financial Analyst. During the technical review there could be further questions or issues that the applicant will be required to address.

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Once our Financial Analyst has completed the review and recommends approval of the charter and license, the APPLICANT will submit a request for an on-site exam by a TDI Financial Examiner. The APPLICANT will submit a request for a qualifying exam; the request will state where the books and records of the proposed incorporation are held and the bank the initial funds of the proposed corporation are held. At this junction in the process, a common concern is how to establish a bank account or financial structure for an entity that does not exist – a suggestion is to set up an account at a bank “in the name of the incorporators for the formation of new insurance corporation”.

When our Financial Examiner has finished the on-site review, we will draft a report with our findings. When the proposed corporation passes the on-site exam and verification of funds to start the insurance company, the Specialist will prepare an order approving the charter, then an order granting the new insurance corporation the authority to bear risks in Texas.

**APPENDIX**

**ARTICLES OF INCORPORATION REQUIREMENTS:**

The Articles of Incorporation submitted for approval to the Texas Department of Insurance must contain the requirements listed below. Applicants may submit **TDI form FIN322** or **TDI form FIN323** as an alternative to creating an Articles of Incorporation and to streamline the incorporation process.

<b>Requirements for Property and Casualty (P&amp;C) Articles of Incorporation</b>	<b>Requirements for Life, Accident and Health (Life/A&amp;H) Articles of Incorporation</b>
The principal business office in Texas or location of service of process (if books and records are located out of state).	The company’s name must contain the words “Insurance Company”
Cite the address and person for service of process	The principal business office in Texas
Language stating that if its office can be moved out-of-state, prior notice to TDI is required	Cite the address and person for service of process
State charter’s duration	Language stating that if its office can be moved out-of-state, prior notice to TDI is required
State that insurer will do the business of a Property and Casualty insurer in the state of Texas.	State charter’s duration
At least one half of the amount of authorized shares (number of authorized shares times par	State that insurer will do the business as a Life (could include accident and health, if

value) must equal \$2.5 million dollars. If no par value stock is proposed, there must be a stated value.	appropriate) insurer in the state of Texas.
Stock par value cannot be less than \$1 or more than \$100	At least one half of the amount of authorized shares (number of authorized shares times par value) must equal \$700K. If no par value stock is proposed, there must be a stated value.
Proposed surplus (paid in capital) must be at least \$2.5 million.	Stock par value cannot be less than \$1 or more than \$100
At least 50% of the proposed entity's authorized shares must be fully paid for	Proposed surplus (paid in capital) must be at least \$700K.
Capital and surplus must equal at least \$5 million	At least 50% of the proposed entity's authorized shares must be fully paid for
Language setting forth that insurance corporation will have at least seven (7) directors, appointed by shareholders, at all times	Capital and surplus must equal at least \$1.4 million
Language stating that the insurance corporation will require the directors to keep a full and correct record of all board transactions	Language setting forth that insurance corporation will have at least five (5) directors, appointed by shareholders, at all times
Language authorizing the directors to fill any vacancy that may occur during the year, between shareholder meetings	Language stating that the insurance corporation will require the directors to keep a full and correct record of all board transactions
Language setting forth that the annual meeting of shareholders for the election of directors required to be held prior to May 1 of each calendar year	Language authorizing the directors to fill any vacancy that may occur during the year, between shareholder meetings
Language that directors will elect corporate officers in accordance to its By-laws	Language setting forth that the annual meeting of shareholders for the election of directors required to be held prior to May 1 of each calendar year
The elected president of the corporation must also be a director	Language stating that the shareholders are required to adopt bylaws to govern the company
Each incorporator must adopt and sign the proposed Articles of Incorporation	The elected president of the corporation must also be a director
Include the name and address of at least three (3) incorporators, all must be residents of Texas, and have each incorporator acknowledge and sign the Articles of Incorporation	Include the name and address of at least three (3) incorporators, all must be residents of Texas, and have each incorporator acknowledge and sign the Articles of Incorporation

<b>Requirements for a Mutual Property and Casualty (P&amp;C) Charter</b>	<b>Requirements for Mutual Life, Accident and Health (Life/A&amp;H) Charter</b>
the name and residence of each incorporator	the name and residence of each incorporator
the name of the company – must contain “mutual”	the name of the company – must contain “mutual life”
the location of the company's principal office at which company business is to be transacted	the location of the company's principal office at which company business is to be transacted
the number of directors	the number of directors
the name and residence of each initial director	the name and residence of each initial director
the amount of the company's unencumbered surplus is in excess of \$2.5 million.	the amount of the company's unencumbered surplus is in excess of \$1.4 million.

## **AFFIDAVIT REQUIREMENTS**

In conjunction with the Articles of Incorporation/charter, submit an INCORPORATORS' AFFIDAVIT, signed by at least two incorporators and sworn before a notary public, setting forth:

- The aggregate number of shares subscribed and aggregate consideration received therefore;
- That the stock of the company has been subscribed in good faith and fully paid for in the amount of at least \$2,500,000 capital and that the company is possessed of at least \$2,500,000 surplus in addition to its capital (FOR P&C COMPANY);
- That the stock of the company has been subscribed in good faith and fully paid for in the amount of at least \$700,000 capital and that the company is possessed of at least \$700,000 surplus in addition to its capital (FOR LIFE COMPANY); and
- That the funds representing the capital and surplus are the bona fide property of the proposed company.
- That the facts set forth in the application and in the Articles of Incorporation are true and correct.

## **REQUIRED PROVISIONS FOR CUSTODIAL AGREEMENTS**

Any arrangement involving an insurer's deposit of its securities with a custodian must be evidenced by an agreement signed by the insurer and the custodian. The agreement signed by the insurer and the custodian must provide for the conditions described in paragraphs (1) - (12) of this subsection:

1. The custodian shall exercise the same due care that is in accordance with reasonable commercial standards expected of a custodian with the responsibility for the safeguarding of the insurer's custodied securities and for compliance with all provisions of the custodial agreement, whether the insurer's custodied securities are in the custodian's possession or have been redeposited by the custodian with a subcustodian.
2. The custodian shall indemnify the insurer for any loss of custodied securities occasioned by the negligence or dishonesty of custodian's officers and employees, or burglary, robbery, hold-up, theft or mysterious disappearance, including loss by damage or destruction. In the event of such loss, the custodian must promptly replace the custodied securities or the value thereof, and the value of any loss of rights or privileges resulting from said loss of custodied securities.
3. Custodied securities shall be segregated at all times from the proprietary assets of the custodian and subcustodian.
4. The custodian's official records shall separately identify custodied securities owned by the insurer, whether held by the custodian or subcustodian. If held by a subcustodian, the custodian's records shall also identify the subcustodian.
5. Custodied securities that are in registered form shall be registered only in the name of the insurer, the custodian or its nominee, or the subcustodian or its nominee.
6. All activities involving the insurer's custodied securities shall be subject to the insurer's instructions and the custodied securities shall be withdrawable upon demand of the insurer.
7. The custodian shall furnish, upon request by the insurer, a confirmation of all transfers of custodied securities to or from the account of the insurer, and reports of custodied securities sufficient to verify information reported in the insurer's annual statement filed with the Texas Department of Insurance and supporting schedules and information required in any audit of the insurer's financial statements whether the custodied securities are held by the custodian or by a subcustodian.
8. The insurer or its designee shall be entitled to examine all records maintained by the custodian or subcustodian relating to the insurer's custodied securities during the course of the custodian's regular business hours. This paragraph does not apply to a clearing corporation or the Federal Reserve Book Entry System.
9. Upon request of the insurer, the custodian shall be required to send to the insurer all reports it receives from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control, and all reports prepared on the custodian's and subcustodian's systems of internal accounting control of custodied securities.
10. The custodian shall not use any of the insurer's custodied securities for the custodian's benefit and none of the insurer's custodied securities shall be loaned, pledged, or hypothecated by the custodian or subcustodian without a written contract executed by the insurer separate and apart from the custodial agreement.

11. The custodian is authorized and instructed by the insurer to honor any requests made by the Texas Department of Insurance for information concerning the insurer's custodied securities. The department, from time to time, may request, and the custodian shall furnish, a detailed listing of the insurer's custodied securities (whether in the possession of the custodian or with a subcustodian). The custodian's response to such requests shall be made directly to the department and shall encompass all of the insurer's custodied securities (whether in the possession of the custodian or with a subcustodian).
12. The custodian and subcustodian shall maintain the usual and customary insurance coverage for custodial banking risks at levels considered reasonable and customary for the custodian banking industry covering the custodian's duties and activities as custodian for the insurer's assets and shall describe the nature and extent of such insurance protection. Any change in such insurance protection during the term of the custodial agreement shall be promptly disclosed to the insurer.