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***DISCLAIMER:*** *The note is not to be considered legal, accounting or tax advice, it is not complete, nor can it be a reference source. I do not guarantee the accuracy of the information provided herein and will not be held liable for any legal action resulting from reliance on this note.*

## **Close Corporation**

**1.1 Welcome.** Hi, and welcome. This video is one in a series discussing various topics my clients have asked me to address. This discussion addresses the term “**Close Corporation**” as that term is commonly used in various corporate documents, especially in formation of the entity. This is a “30,000-foot” look at these terms and their implications vary from state to state. Your states’ implications will certainly be different. You must consult a licensed professional in your jurisdiction.

**1.2 No Legal Advice.** I cannot and do not provide any advice; only a licensed professional in your jurisdiction can do that. You should assume I am not licensed in any jurisdiction and am not addressing any of your specific concerns. You must consult a licensed professional in your jurisdiction.

## **ARTICLE 1 Corporation**

**2.1 Provision.** This provision must be stated in the entity’s formation documents, such as Articles of Incorporation. Here is the statement as set forth in the Texas Business Organizations Code, but most state provisions will be similar: “This corporation is a close corporation. ” §3.008. There may be a form promulgated by your Secretary of State that requires a filing, similar to Form 812, Statement of Operation as a Close Corporation, which will state something similar: “...close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders’ agreement under....” Subchapter O (Sections 21.701-21.732) of the BOC. See Attached.

**2.2 Relaxed Requirements.** “Regular” Corporations” have to comply with more required formalities, for example rules for nificating shareholders of Shareholder Meetings, Voting on various corporate matters and the like. A “Close Corporation” provision relaxes these restrictions recognizing that most corporations are small family-owned enterprises and do not need these extra formalities, and indeed exposes the corporation to legalities and that are not really appropriate.

**2.3 Stock Certificate Legend.** The share certificates may be required to have printed on the certificate something like the following: *“These shares are issued by a close corporation as defined by the Texas Business Organizations Code. Under the Code, a shareholders' agreement may provide for management of a close corporation by the shareholders or in other ways different from an ordinary corporation. This may subject the holder of this certificate to certain obligations and liabilities not otherwise imposed on shareholders of an ordinary corporation. On any sale or transfer of these shares, the transferor is obligated to deliver to the transferee a complete copy of any shareholders' agreement.”*

**2.4 Shareholder Liability May be Affected.** A presentation to the State Bar of Texas stated the following with regard to Close Corporations:

“Subchapter O of Chapter 21 of ..The BOC also contains a provision that protects shareholders of these special statutory “close corporations” against veil piercing. This protective provision states that neither the failure of a close corporation to observe usual formalities or the statutory requirements prescribed for an ordinary corporation, nor the performance of a shareholders’ agreement that treats the close corporation as if it were a partnership or in a manner that otherwise is appropriate only among partners, is a factor in determining whether to impose personal liability on the shareholders for an obligation of the close corporation by disregarding the separate corporate existence or otherwise. Tex. Bus. Orgs. Code § 21.730.”

Elizabeth S. Miller (Baylor Law School, Waco, 254-710-6583, <https://www.baylor.edu/>)  
Joseph F. Coniglio (Greenberg Traurig, Dallas), Michael Sawicki (Sawicki Law, Dallas),  
“The Limits of Limited Liability: Veil Piercing and Other Bases Of Personal Liability of Owners, Governing Persons and Agents of Texas Business Entities” State Bar of Texas 27th Annual Advanced Medical Torts March 19-20, 2020 San Antonio; bottom of page 4.

**Form 812**  
**(Revised 05/11)**  
Return in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709  
Filing Fee: \$15



This space reserved for office  
use

**Statement of Operation  
as a  
Close Corporation**

**Entity Information**

The name of the corporation is:

The file number issued to the corporation by the secretary of state is:

**Statement of Operation**

The close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement under subchapter O, chapter 21 of the Texas Business Organizations Code.

The date the operation of the corporation began is:

mm/dd/yyyy

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date:

\_\_\_\_\_  
Signature and title of officer of the corporation

**Print** **Reset**

**Form 812—General Information**  
**(Statement of Operation as a Close Corporation)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

**Commentary**

Under Section 21.718 of the Texas Business Organizations Code (BOC), a close corporation that begins to conduct its business and affairs under a shareholders' agreement that has become effective shall promptly execute and file with the secretary of state a statement of operation as a close corporation.

This form has been promulgated to comply with the provisions of the Texas Business Organizations Code (BOC) as well as prior law regarding statements of operation as a close corporation. There are not substantive differences in the filing of the statement under prior law and under the BOC. Consequently, instructions for the form only make statutory references to the BOC.

**Instructions for Form**

- **Entity Information:** Set forth the name of the corporation as stated in its governing documents. It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the instrument.
- **Statement of Operation:** The statement must specify that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement and provide the date the operation under the shareholders' agreement began.

**Execution:** Under section 21.718 of the BOC, the statement of operation must be signed by an officer on behalf of the corporation.

The statement of operation need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for statement of operation is \$15. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11