

ARTICLES OF ASSOCIATION

The requirements for articles of association for a Texas state bank are set out in section 32.002 of the Texas Finance Code (the “FC”). In addition, pursuant to FC §32.008, the requirements set forth in the Texas Business Organizations Code (“BOC”) for a certificate of formation for a Texas for-profit corporation apply to articles of association of a Texas state bank to the extent they are not inconsistent with the FC. The BOC requirements may be found in BOC sections 3.004, 3.005, 3.007, and 21.360. Differences between the FC and the BOC, as well as filing comments, will be noted in *italics* in the discussion below.

Pursuant to FC §32.002, articles of association must be signed by each organizer, with the signatures acknowledged by a notary public, and state:

1. the name of the bank;
2. the period of the bank’s duration, which may be perpetual. *The BOC does not require such a statement unless it is not perpetual;*
3. the powers of the bank, which may be stated as all powers granted by law to a state bank, or a specific list of such powers under FC §32.001;
4. the aggregate number of shares the bank will be authorized to issue and the number of classes of shares. *For a new bank’s initial articles of association, the number of authorized shares must be identical to the number of shares subscribed and paid in cash;*
5. if shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights of the shares in each class, the number of shares of each class, and a statement of the par value of shares in each class, or that they will be without par value;
6. any limitation or denial of preemptive rights. *The BOC requires a statement regarding preemptive rights only if they exist;*
7. any provision granting the right to cumulative voting. *The BOC similarly requires such a statement, so if there will be no cumulative voting, it need not be addressed in the articles of association;*
8. the aggregate amount of consideration to be received for all shares initially issued and a statement that all authorized shares have been subscribed, and all subscriptions have been irrevocably paid in cash;
9. the street address of the bank’s home office;
10. the number of directors constituting the initial board and their names and street addresses. *The addresses may be either a business or residential address. This provision*

may be expanded to reflect the range within which the number of directors will fall, usually the statutory 5-25, and the procedure for determining the exact size of the board, but only the specified information concerning the initial board of directors is required; and,

11. the name and address of each organizer. *The address may be a business or residence, or a mailing address. If the address is listed for each organizer as a signatory to this document, a separate listing in the body of the articles need not be made.*

While the foregoing is intended to set out only the minimum requirements, other provisions not inconsistent with law may be included in articles of association. Most articles of association include a limitation on liability for directors, and an indemnification provision for directors and officers.

Limitation of liability is addressed in section 7.001 of the BOC. BOC §7.001(c) lists specific exceptions to the limitation, including “an act or omission not in good faith that: . . . (B) involves intentional misconduct or a knowing violation of law.” If included, this exception should be modified to incorporate the language of FC §31.006, which adds “gross negligence” and “wilful” misconduct.

Permissive indemnification is addressed in BOC §§8.101-8.106 (BOC §§8.051-8.052 discusses mandatory indemnification; because these provisions do not conflict with the FC, they apply to a state bank in any event and do not need to be addressed in articles of association.) While there is nothing in the FC inconsistent with the indemnification provisions of the BOC, there is nonetheless a limitation imposed by federal law relating to costs and penalties resulting from an administrative action by a federal agency. Appropriate language should be included that recognizes this additional limitation.

The following format is not required, but is an example that meets statutory requirements. Text within brackets should be replaced with the correct text for the bank being formed.

ARTICLES OF ASSOCIATION

Article 1

The name of the Texas state banking association is [Anywhere State Bank] (the “Bank”).

Article 2

The street address of the Bank’s home office is [123 Main Street], [Anywhere], Texas.

Article 3

The number of directors constituting the Bank’s initial board of directors is [five (5)], and the names and addresses who will serve as directors until the first annual meeting of shareholders or until the election and qualification of their successors are as follows:

[Director 1]
[Director 2]
[Director 3]
[Director 4]
[Director 5]

[Street address, city, state, zip code]
[Street address, city, state, zip code]
[Street address, city, state, zip code]
[Street address, city, state, zip code]
[Street address, city, state, zip code]

Article 4

The Bank is authorized to issue [one hundred thousand (100,000)] shares of common stock with a par value of [\$5.00] per share.

Article 5

The Bank may exercise all powers granted by law to a state bank.

Article 6

The period of duration of the Bank is perpetual.

Article 7

Shareholders of the Bank shall have no preemptive rights to acquire Bank stock.

Article 8

The aggregate amount of consideration to be received for all shares initially issued by the Bank is [ten million dollars (\$10,000,000)]. All authorized shares have been subscribed, and all subscriptions received have been irrevocably paid in cash.

Execution

Each of the undersigned organizers of the Bank signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute this filing instrument.

Date: _____

Signature of organizer

Printed or typed name of organizer

Address of organizer

Date: _____

Signature of organizer

Printed or typed name of organizer

Address of organizer

Date: _____

Signature of organizer

Printed or typed name of organizer

Address of organizer

Date: _____

Signature of organizer

Printed or typed name of organizer

Address of organizer

Date: _____

Signature of organizer

Printed or typed name of organizer

Address of organizer

[Notary statement, seal and signature]