

Form 307—General Information
(Application for Registration of a Foreign Limited Liability Partnership)

The attached form is drafted 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

To transact business in Texas, a foreign limited liability partnership must register with the secretary of state under chapters 9 and 152 of the Texas Business Organizations Code (BOC). The registration requirements of chapter 9 apply to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability to any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

A partner of a foreign limited liability partnership is not liable for a debt or obligation of the partnership solely because the partnership transacted business in this state without registration (BOC § 152.910).

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Limited liability partnerships are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

A foreign limited partnership that is also a limited liability limited partnership must comply with the registration requirements of chapter 9 of the BOC as a limited partnership in addition to its registration as a limited liability partnership. **Form 306** may be used to effect the registration of a foreign limited partnership.

Term of Registration: A registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date unless withdrawn or revoked at an earlier time or renewed under section 152.908 of the BOC (BOC § 152.905(e)).

Change in Partners: A registration of a foreign limited liability partnership is not affected by subsequent changes in the number of partners in this state (BOC § 152.905(d)). However, please note that if the foreign limited liability partnership is also registered as a foreign limited partnership, the limited partnership must file an application for amended registration to reflect the admission or withdrawal of a general partner or a change of name to the general partner stated in its application for registration. (Form 412)

Instructions for Form

- **Item 1—Entity Name:** Provide the full legal name of the foreign entity as stated in the entity's formation or registration document. Do not include a "d/b/a" or assumed name in item 1. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that the name of a foreign limited liability partnership contain a recognized term of organization as listed in sections 5.055 and 5.063 of the BOC.

- **Item 2—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2. Accepted organizational designations for a foreign limited liability partnership are "limited liability partnership" or an abbreviation of that phrase. The name of a foreign limited partnership that is a limited liability partnership may contain the words "limited liability limited partnership," an abbreviation of that phrase, or the organization terms permitted by section 5.063 (BOC § 5.055(b)).

In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.

- **Item 3—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). Provision of the partnership's FEIN is required under section 9.007(b)(2) of the BOC. If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. The partnership may file an amendment to the registration after it receives its FEIN number from the IRS.

- **Item 4—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its initial registration as a limited liability partnership under the laws of its jurisdiction in the format shown in the application.

- **Item 5—Certification of Existence:** The application also must contain a statement that the entity exists as a valid foreign limited liability partnership under the laws of the entity's jurisdiction of formation.

- **Item 6—Number of Partners:** For purposes of completion of the application, the number of partners means the number of partners in Texas as of the date of the statement. In the context of the provisions of chapter 152, subchapter K, the term "partners" refers to general partners only in a limited partnership registering as a limited liability partnership (BOC § 4.155(12)). For purpose of determining the number of partners in Texas, the secretary of state has adopted administrative rules providing that a partner is considered to be in Texas if:

- (1) the partner is a resident of the state;
- (2) the partner is domiciled or located in the state;
- (3) the partner is licensed or otherwise legally authorized to perform the services of the partnership in this state; or
- (4) the partner, or a representative of the partnership working under the direct supervision or control of the partner, will be providing services or otherwise transacting the business of the partnership within the state for a period of more than 30 days.

The filing fee is calculated by multiplying the number of partners listed in item 6 of the application by **\$200**. However, the fee shall be not less than **\$200** nor exceed **\$750**.

- **Item 7—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapters 9 and 152 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign limited liability partnership for service of process under the circumstances described by section 5.251 of the BOC (BOC § 9.007(b)(11)).
- **Item 11—Business or Activity to be Pursued in Texas:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be "any lawful business or activity under the law of this state."
- **Effectiveness of Filing:** The application for registration of a limited liability partnership becomes effective as of the date of filing by the secretary of state (option A). However, pursuant to sections

4.052, 4.053, and 152.905(c) of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B).

On the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 152.905 of the BOC, the application for registration must be signed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

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 an application for registration of a foreign limited liability partnership is **\$200 per general partner not to exceed \$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. 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 a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A foreign limited liability partnership is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the entity's registration.

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