

Form 311—General Information
(Application for Registration for a Foreign Professional Association)

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 professional entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). A foreign professional association is an association, other than a partnership, formed under the laws of a jurisdiction other than Texas that is formed for the specific purpose of providing a professional service that by law a for-profit corporation is prohibited from rendering. A foreign professional association may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is a professional individual who is licensed or duly authorized in this state to provide the same professional service provided by the entity.

Reciprocity: A foreign professional entity cannot obtain an application for registration unless the jurisdiction in which the professional entity is incorporated or organized would permit reciprocal admission of a Texas professional entity formed under title 7 of the BOC.

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.

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: Professional associations 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.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign professional entity as stated in the entity's formation document. Do not include a "d/b/a" or assumed name in item 1. In addition, the name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:

- (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.054 of the BOC;
- (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

In addition, section 5.060 of the BOC provides that the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Consult the applicable regulatory board or agency about name requirements that might be applicable to the profession. The secretary of state cannot advise you regarding those requirements.

- **Item 2A—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 2A. Accepted organizational designations for a foreign professional association are: “associated,” “associates,” “association,” “professional association,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. 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 association’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). If the association has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN at the time of submission will assist in the establishment of the association’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.

- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation.
- **Item 6—Reciprocity Statement:** The application must contain a statement that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of a professional entity formed under the BOC.
- **Item 7—Statement of Purpose:** The application must state the professional service that the entity proposes to pursue in Texas. The purpose of a foreign professional association must comply with the provisions of title 7 and title 1, chapter 2 of the BOC. Except as provided by title 7, chapter 2 of the BOC limits the purposes of a professional entity to:
 - (1) the provision of one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and
 - (2) services ancillary to the provision of the professional service.

In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a professional association to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners to perform professional services that fall within the scope of practice of those practitioners.
- (2) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (3) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners.

A state board or agency exercising regulatory control over a profession provided through a professional entity continues to exercise regulatory authority over its respective license. Questions relating to the provision of the entity's professional services should be directed to the regulatory board or agency.

- **Item 8—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 chapter 9 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 9—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 10—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 professional association cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: 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 11—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 filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 12—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign professional association. Generally, this would be the board of directors of the association or other group of persons who are entitled to manage and direct the affairs of the association. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 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). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take

effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, 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 or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. 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 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

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)

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 for a professional association is \$750. In addition, the foreign filing entity will be assessed a late filing fee of \$750 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 registered foreign professional association 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 formation. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

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