

Form 312—General Information
(Application for Registration of a Foreign Business Trust, Real Estate Investment Trust or Other Foreign Filing Entity)

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 entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies 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 for any owner or member under the laws of its jurisdiction of formation is required to register.

Use this form if the application for registration is submitted on behalf of a foreign business trust, foreign real estate investment trust or a foreign filing entity other than a for-profit, nonprofit, or professional corporation, limited partnership, limited liability company, limited liability partnership or professional association.

This form also may be used for permissive registration under section 9.003 of the BOC. In accordance with section 9.003, a foreign entity that is eligible under other law of Texas to register to transact business in this state, but is not registered under that law, may file an application for registration under chapter 9 of the BOC unless that registration is prohibited by the other law.

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: Business trusts are subject to a state franchise tax. REITs are generally not considered taxable entities for franchise tax purposes. However, a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity. Other legal entities registering to transact business may be deemed taxable entities and 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:** Provide the full legal name of the foreign 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 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
 - (2) 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.state.tx.us. 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.

- **Item 2—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 2 of the application. 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—Entity Type:** Indicate whether the foreign filing entity is a business trust, real estate investment trust or other foreign filing entity. If other, please describe the type of entity that is registering.
- **Item 4—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). If the entity has not received its FEIN at the time of submission, this should be noted in item 4 on the application form. Provision of the FEIN at the time of submission will assist in the establishment of the entity's tax account with the Comptroller of Public Accounts.
- **Item 5—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 6—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 7—Statement of Purpose:** 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.” 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.
- **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 entity 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 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 entity. Generally, this would be the trustees of a business trust, the trust managers of a real estate investment trust or other group of persons who are entitled to manage and direct the affairs of the foreign entity. A minimum of one governing person is required. If the governing person is an individual, 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.). If the governing person is an organization,

set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

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 trustees 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, 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 for a foreign filing entity 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 entity 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 foreign filing entity's registration.

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