

Form 403—General Information (Certificate of Correction)

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

Subchapter C of chapter 4 of the Texas Business Organizations Code (BOC) governs a certificate of correction. A filing instrument that is an inaccurate record of the event or transaction evidenced by the instrument, that contains an inaccurate or erroneous statement, or that was defectively or erroneously signed, sealed, acknowledged or verified may be corrected by filing a certificate of correction (BOC §4.101). A filing instrument may be corrected to contain only those statements that the governing law authorizes or requires to be included in the original filing instrument. A certificate of correction may not alter, add, or delete a statement that by its alteration, addition or deletion would have caused the secretary of state to determine that the filing instrument did not conform to the requirements of applicable law at the time of filing (BOC § 4.102).

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed with one exception. As to a person who is adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed.

Instructions for Form

- **Item 1—Entity Information:** The certificate of correction must contain the legal name of the entity. *If the certificate of correction corrects the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 2—Filing Instrument to be Corrected:** Identify the filing instrument to be corrected by description and date of filing with the secretary of state. Example: “Certificate of formation filed on January 2, 2009.” If the filing instrument to be corrected is a merger, conversion or exchange, additional instructions are found on page 2 of this form.

Identification of Errors and Corrections: Corrections may be made to the entity name, registered agent name, registered office address, stated purpose, or stated duration by checking the applicable box in this section and stating, in corrected form, the portion of the instrument to be corrected. If the necessary corrections are other than those provided for by the check boxes, please use the section entitled “Identification of Other Errors and Corrections.”

Correction to Entity Name: The correction to an entity name will require the secretary of state to determine the availability of the entity name as corrected. If the entity name, as corrected, is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity (other than the entity filing the correction), or any name reservation or registration filed with the secretary of state, the correction cannot be filed (BOC § 5.053).

Correction to Registered Agent: 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 the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a certificate of correction that corrects the name of the registered agent.

Please note that the designation or appointment of a person as the registered agent by an organizer or a managerial official is an affirmation that the person named as registered agent in the corrected instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010) 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)

Correction to Registered Office: 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).

- **Identification of Other Errors and Corrections:** This section of the form contains four text boxes that may be used to identify corrections to errors or inaccuracies in the filing instrument other than the provisions specifically described next to the check boxes in the section under "Identification of Errors and Corrections." Use the areas provided to identify by reference or description those provisions to be added, altered or deleted by the correction. If the filing instrument to be corrected was defectively or erroneously signed, sealed, acknowledged or verified, a correctly executed instrument should be attached to the form as an exhibit.
- **Statement of Correction:** This section states that the purpose of the certificate of correction is to correct inaccuracies, errors or defects consistent with section 4.103 of the BOC.
- **Correction of Merger, Conversion or Exchange:** If the filing instrument to be corrected is a merger, conversion or other instrument involving multiple entities, please include the names and file numbers for all entities which were parties to the transaction so that the secretary of state may index the certificate of correction to the record for each entity. If the space provided on page 5 of this form is not sufficient, include the information as an attachment to this form.
- **Effectiveness of Filing:** This section states the effectiveness of filing as provided in section 4.105 of the BOC.
- **Execution:** Pursuant to section 4.101(b) of the BOC, the certificate of correction must be signed by a person authorized by the BOC to sign the filing instrument to be corrected. Generally, a governing person or managerial official of the entity signs a filing instrument, including a certificate of correction.

If the correction relates to a certificate of formation, the certificate of correction would be signed by a person authorized to sign the certificate of formation. If the correction relates to a merger, conversion or exchange transaction, the certificate of correction need not be signed on behalf of each entity named in the filing instrument being corrected. In the case of a merger, the certificate of correction must be signed by a person authorized to act in regard to a surviving entity in the merger.

In the case of a conversion, the certificate of correction must be signed on behalf of the converted entity. In the case of an exchange, the certificate of correction must be signed by an acquiring entity.

The certificate of correction 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 a certificate of correction 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 a file-stamped copy of the document, if a duplicate copy was provided as instructed.

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