

Form 406—General Information
(Amendment to Registration)

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

This form has been promulgated to comply with the general provisions of the Texas Business Organizations Code (BOC) regarding amendments to the registration of a foreign filing entity, other than a foreign limited partnership or limited liability partnership.

Form 407 should be used to amend the registration of a foreign limited liability partnership.

Form 411 should be used to amend the registration of a foreign financial institution.

Form 412 should be used to amend the registration of a foreign limited partnership.

Form 422 should be used to amend the registration of a foreign filing entity governed by the BOC to reflect a change effected by a merger or conversion and to transfer the entity's registration.

Required Amendments: Section 9.009(a) of the BOC requires a foreign filing entity to amend its registration to reflect a change to its name or a change in the business or activity stated in its application for registration. *The application for amendment of registration must be filed on or before the 91st day following the date of change in the jurisdiction of formation.* The failure of a foreign filing entity to file an amendment to its registration when required to do so by law may result in the revocation of the entity's registration. (BOC § 9.101(b)(1)(C)).

If a foreign entity authorized to transact business in Texas changes its name to a name that would cause the entity to be denied an application for registration, the previously issued application for registration is suspended until the entity changes its name to a name that is available to it under the laws of this state.

Other Amendments: This form may also be used to amend other statements contained in the application for registration as desired by the entity. For example, a foreign entity may update the principal office address on file with the secretary of state by filing an amendment to its registration.

Instructions for Form

- **Items 1-3—Entity Information:** The amendment to registration must contain the legal name of the entity. If the entity attained its registration under an assumed name, the qualifying assumed name as shown on the records of the secretary of state should be set forth on the amendment to registration. It is recommended that the date the original application for registration was filed and the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Items 4-6—Amendments to Application:** Items 4 through 6 describe circumstances or changes that require a foreign filing entity to amend its registration with the secretary of state. Other changes to the application for registration may be made by completing item 7.
- **Item 4—Change of Name:** Complete item 4 to reflect a change to the legal name of the entity as amended in its jurisdiction of formation. Provide the full legal name of the foreign entity as stated in the entity's formation document, as amended. The name of the foreign entity must comply with

chapter 5 of the BOC. It is recommended that you contact the secretary of state to obtain a preliminary determination on the availability of the new entity name by calling (512) 463-5555, dialing 7-1-1 for relay services, or by sending an e-mail to corpinfo@sos.state.tx.us.

- **Item 5—Assumed Name Election/Change:** Item 5 must be completed in order to:

- (1) adopt an assumed name for purposes of maintaining the registration in Texas when the legal name of the entity is not available for its use in Texas or fails to include one of the organizational designations required under Texas law; or
- (2) effect a change in the assumed name under which the original or any amended application for registration was granted.

If the foreign entity is electing to adopt an assumed name or changing the assumed name currently shown as its qualifying assumed name, 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. If the former assumed name will no longer be used by the entity, an abandonment of assumed name may be filed to terminate the assumed name filing (Form 504).

- **Item 6—Change of Purpose:** Item 6 must be completed in order to effect a change in the business or activity stated in its original application for registration or any amended registration. The business or activity may be stated to be any lawful business or activity under the law of this state. The entity must be authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.
- **Item 7—Other Changes to the Registration:** Complete item 7 to make changes to the application for registration, other than changes to name and purpose. For example, a foreign entity may update its principal office address by amending its registration. If the space provided is insufficient, other changes to the registration may be provided as an exhibit or attachment to this form.

Amendment to Registered Agent: A person designated as the registered agent of a foreign entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity (BOC § 5.201). 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 an amendment to registration that appoints a new registered agent.

Please note that 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 as registered agent in the instrument has consented to serve as registered agent. (BOC § 5.2011) 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)

Amendment 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).

- **Effectiveness of Filing:** An amendment to 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.

- **Execution:** Pursuant to section 4.001 of the BOC, the amendment to 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 amendment to registration 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 an amendment to registration is **\$150**, unless the foreign filing entity is a nonprofit corporation or a cooperative association. The filing fee for a nonprofit corporation or a cooperative association is **\$25**. 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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