

Form 414—General Information
(Restated Certificate of Formation with New Amendments)

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

Sections 3.057 to 3.063 of the Texas Business Organizations Code (BOC) govern a restated certificate of formation of a Texas filing entity. A filing entity may restate its certificate of formation to:

- (1) state the text of the certificate of formation (as amended, corrected, or restated) to include all previous amendments carried forward; or
- (2) state the text of the certificate of formation to include all previous amendments and each new amendment to the certificate being restated.

An amendment effected by a restated certificate of formation must comply with the provisions and procedures governing certificates of amendment in title 1, chapter 3 of the BOC and in the title governing the specific entity.

This form is designed to accompany the restated certificate of formation described in statement 2 shown above. *If the restated certificate of formation does not effect any new amendments to the certificate of formation, use Form 415 rather than this form.*

The text of the restated certificate of formation, which is to be attached as an exhibit, may omit the name and address of each organizer. In the case of a limited partnership the restated certificate must include *the name and address of each general partner*. The restated certificate of formation may also omit any other information that may be omitted under the provisions of the BOC applicable to the filing entity.

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If updating 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.

For-profit or Professional Corporation

Sections 21.052 to 21.055 of the BOC set forth the procedures for amending the certificate of formation for a for-profit corporation or professional corporation. The board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the shareholders. Written or printed notice setting forth the proposed amendment is given to each shareholder of record entitled to vote not later than the 10th day and not earlier than the 60th day before the date of the meeting, either personally, by electronic transmission, or by mail. (Please refer to chapters 6 and 21 of the BOC for further information.)

Pursuant to section 21.364, the proposed amendment is adopted on receiving the affirmative vote of two-thirds of the outstanding shares entitled to vote. If any class or series of shares is entitled to vote as a class, the amendment must also receive the affirmative vote of two-thirds of the shares within each class or series that is entitled to vote as a class. Any number of amendments may be submitted to the

shareholders and voted on at one meeting. Alternatively, amendments may be adopted by unanimous written consent of the shareholders.

If no shares have been issued, the amendment is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors.

An officer must sign the restated certificate of formation. If no shares have been issued and the amendment was adopted by the board of directors, a majority of the directors may sign the restated certificate of formation.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may amend its certificate of formation by following the procedures set forth in its certificate of formation. If the certificate of formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors or executive committee members and the names and addresses of each person serving on the board or committee.

An officer must sign the restated certificate of formation.

Nonprofit Corporation

Sections 22.105 to 22.108 of the BOC set forth the procedures for amending the certificate of formation for a nonprofit corporation. If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or special meeting. The proposed amendment is adopted on receiving two-thirds of the votes that members present, in person or by proxy, were entitled to cast (BOC § 22.164). Any number of amendments may be submitted to the members and voted on at one meeting. Alternatively, the amendment may be adopted without a meeting if a written consent, setting forth the action to be taken, is signed by all the members entitled to vote. (Please refer to chapters 6 and 22 of the BOC for further information.)

In addition to the provisions authorized or required by section 3.059, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors. A nonprofit corporation that is a church in which management is vested in its members under section 22.202 of the BOC must contain a statement to that effect in any restated certificate of formation if the original certificate of formation was not required to contain such statement.

If the corporation has no members or no members with voting rights, an amendment is adopted by a majority vote of the board of directors (BOC § 22.107).

An officer of the nonprofit corporation must sign the restated certificate of formation.

Cooperative Association

Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. The board of directors may propose an amendment to the certificate of formation by a two-thirds vote of the board members. Notice of the meeting to consider the proposed amendment must be provided to the members no later than the 31st day before the date of the meeting. To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment. The cooperative association must file a certificate of amendment with the secretary of state within thirty (30) days after its adoption by the members.

An officer of the cooperative association must sign the restated certificate of formation.

Limited Liability Company or Professional Limited Liability Company

Chapter 101 of the BOC governs limited liability companies. Pursuant to section 101.356(d), an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. If the company has managers, but has yet to admit its initial member, the amendment would be approved by the affirmative vote of the majority of all the company's managers as permitted by section 101.356(e).

If the limited liability company has managers, an authorized manager must sign the restated certificate of formation. If the company does not have managers and is managed by its members, an authorized managing-member must sign the restated certificate of formation.

Limited Partnership

Chapter 153 of the BOC governs limited partnerships. A certificate of limited partnership may be amended at any time for any proper purpose determined by the general partners. However, section 153.051 requires a certificate of amendment when there is:

- (1) a change of name of the partnership;
- (2) an admission of a new general partner; or
- (3) the withdrawal of a general partner.

A restated certificate of formation would be approved in the same manner as an amendment to the certificate of formation. The name and address of each general partner must be included in the restated certificate of formation.

Pursuant to section 153.553, at least one general partner must sign the restated certificate of formation. In addition, each general partner designated as a new general partner also must sign the restated certificate of formation. A withdrawing general partner need not sign. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC § 153.553(c)).

Instructions for Form

- **Entity Information:** The restated certificate of formation must contain the legal name of the entity. *If the restated certificate of formation effects further amendments that change 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 entity type, date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.

- **Amendments to Certificate of Formation:** A filing entity may amend its certificate of formation in as many respects as may be desired, *as long as the certificate as amended contains only such provisions as could have been included in the original certificate of formation.* The full text of the provisions as added or altered need not be stated on Form 414. The full text of the amended and altered provisions will be contained in the Restated Certificate of Formation attached to this form as an exhibit.

Amendment to Entity Name: If the restated certificate of formation changes the name of the entity, the new entity name will be checked for availability upon submission. If the new name of the entity is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, 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.

Amendment to Registered Agent: 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 restated certificate of formation that changes the name of the registered agent. *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).

- **Statement of Approval:** As required by section 3.059 of the BOC, the form includes a statement regarding the approval of the amendments made to the certificate of formation. In general, amendments are adopted and approved in the manner set forth in the title of the BOC governing the entity. General procedural information relevant to each filing entity that may use this form precedes the instructions for completing the form.
- **Required Statements:** This form is designed to provide the statements that are to accompany a restated certificate of formation that makes new amendments to the certificate of formation (BOC § 3.059(d)). The text of the restated certificate of formation, which should be attached as an exhibit to this form, should be identified as "Restated Certificate of Formation of [Name of Entity]."
- **Effectiveness of Filing:** A restated certificate of formation 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 certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, 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 restated certificate of formation 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. Please refer to the procedural information relating to the specific entity type for further information on execution requirements.

The name of the entity that is restating its certificate of formation should appear on the “name of entity” line unless the governing person or managerial official signing the document is organized as an entity. In this case, the name of the legal entity that is the authorized person should appear on the “name of entity” line.

The restated certificate of formation 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 a restated certificate of formation is **\$300**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a restated certificate of formation for a nonprofit corporation or a cooperative association is **\$50**. 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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