

Form 415—General Information
(Restated Certificate of Formation without Further 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.

This form is designed to accompany the restated certificate of formation described in statement 1 shown above. *If the restated certificate of formation effects further amendments to the certificate of formation, use Form 414 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 certification of formation 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.

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 restated certificate of formation. *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)

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

Section 21.056 of the BOC governs the adoption of a restated certificate of formation for a for-profit corporation or professional corporation. A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation set forth in sections 21.052 to 21.055 of the BOC. However, if the restated certificate of formation makes no new amendments to the certificate being restated, the restated certificate is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply (BOC § 21.056).

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. A majority of the directors also may sign the restated certificate of formation if no shares have been issued and the board of directors adopts the restated certificate.

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 adopt a restated certificate of formation by following the same procedure for amending its certificate of formation. A professional association amends its certificate of formation by following the procedures set forth in its certificate of formation or 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. However, if the restated certificate of formation makes no new amendments to the certificate being restated, the restated certificate is adopted by a resolution of the board of directors or executive committee and the provisions for adoption by members 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 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

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation set forth in sections 22.105 to 22.108 and section 22.164 of the BOC. However, if the restated certificate of formation makes no new amendments to the certificate, the provisions for adoption by the members of the corporation would not apply. The restated certificate of formation that makes no further amendments would require the affirmative vote of a majority of the directors in office.

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.

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

Cooperative Association

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation. Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. However, if the restated certificate of formation makes no new amendments to the certificate, the provisions for adoption by the members of the cooperative association would not apply. The restated certificate of formation that makes no further amendments would require the affirmative vote of two-thirds of the directors in office.

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

Limited Liability Company or Professional Limited Liability Company

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation. Pursuant to section 101.356 of the BOC, an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. However, when the restated certificate of formation makes no further amendments, the restated certificate of formation would be approved by the affirmative vote of the majority of all the managers of the company; or if the company is governed by its members, a majority of its managing-members.

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

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 of the BOC, at least one general partner must sign the restated certificate of formation. 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 and identify the type of filing entity. It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Required Statements:** This form is designed to provide the statements that are to accompany a restated certificate of formation that does not make new amendments to the certificate of formation (BOC § 3.059(c)). 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:** The 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. Please refer to the procedural information relating to the specific entity type for further information on execution requirements. Generally, a governing person or managerial official of the entity signs a filing instrument.

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, 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 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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