

Form 425—General Information
(Restriction on the Transfer of Shares)

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 provisions of the Texas Business Organizations Code (BOC) as well as prior law regarding filing a statement regarding a bylaw or agreement that restricts the transfer of shares or other securities by a for-profit corporation. There are not substantive differences in the filing of the statement under prior law and under the BOC. Consequently, instructions for the form only make statutory references to the BOC.

A restriction on the transfer or registration of a corporate security may be imposed by the corporation's certificate of formation, the corporation's bylaws, a written agreement among two or more holders of the securities; or a written agreement among one or more holders of the securities and the corporation if certain requirements are met (BOC § 21.209).

Section 21.212 of the BOC provides that a corporation that has adopted a bylaw or is a party to an agreement that restricts the transfer of shares or other securities of the corporation may file the bylaw or agreement for public record. This is a permissive filing. The fact that a statement has been filed may be stated on a certificate representing the restricted shares or securities if required by section 3.202 of the BOC.

Instructions for Form

- **Entity Information:** The statement must contain the legal name of the entity. It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Bylaw or Agreement Restricting Transfer:** The bylaw or agreement restricting transfer must be attached to the statement as an exhibit. Further, the statement must indicate that the attached bylaw or agreement is a true and correct copy.
- **Statement of Approval:** As required by section 21.212(a)(3) of the BOC, the filing must include a statement that the filing was authorized by the board of directors of the corporation, or, in the case of a corporation that is managed in some other manner under a shareholders' agreement, by the person empowered by the agreement to manage the corporation's business and affairs.
- **Effectiveness of Filing:** A statement 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 20.001 of the BOC, the statement must be signed by an officer of the corporation.

The statement 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 the statement filed to record a bylaw or agreement restricting a transfer of shares 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.

Revised 05/11