

General Information
(Consent to Use of Similar Name)

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.

Commentary

A proposed name for an entity can be similar to an existing name only if the holder of the existing name provides notarized consent. Tex. Bus. Orgs. Code § 5.053. Existing names include the names of active Texas filing entities, the names and fictitious names of active registered foreign filing entities, reserved names, and registered names.

This form can be used by the holder of an existing name to consent to the use of a similar name as the name of a filing entity or foreign filing entity for the purpose of submitting a filing instrument to the secretary of state. Use of this form is permissive. Consent can be given in any written format, but the signature of the person providing consent must be notarized. A proposed name cannot be “the same as” an existing name, even if the holder of the existing name consents.

The holder of an existing name is not required to give consent. Consent does not authorize the use of a name in Texas in violation of a right of another under the Trademark Act of 1946, as amended (15 U.S.C. Section 1051 et seq.); Chapter 16 or 71, Business & Commerce Code; or common law. The secretary of state does not enforce these rights. Once the secretary of state files an instrument based on written consent to the use of a similar name, consent cannot be withdrawn. The secretary of state cannot enforce any private agreements or conditions the parties may have entered into regarding consent to use of the similar name. *Questions about consent should be addressed to a private attorney.*

Texas Administrative Code, title 1, part 4, chapter 79, subchapter C sets out the rules for determining whether names are the same, distinguishable on the record, or available with consent. These rules may be viewed at www.sos.state.tx.us/tac/index.shtml.

Instructions for Form

- Item 1: Enter the name of the entity or individual who holds the existing name.
- Item 2: Enter the proposed name.
- Execution: The form must be signed by the person who holds the existing name; if the existing name is held by an entity, an individual who is authorized to act on behalf of the entity must sign the form. The signed consent must be notarized.

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.

- Submission: Submit the form with the relevant filing instrument. *Do not submit separately from the relevant filing instrument.* If written consent is not submitted with the relevant filing instrument, the secretary of state will not be able to take the consent into consideration.

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