

Form 642—General Information
(Certificate of Conversion of a Limited Partnership Converting to a Limited Liability Company)

The attached form is designed 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

A limited partnership may convert into a limited liability company by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a limited partnership is the converting entity and the converted entity is a limited liability company.

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form and jurisdiction of organization as part of the certificate. It is recommended that the date of its formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name 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. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.

- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion or as an exhibit to the plan. If the converting entity opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation for the limited liability company must be attached to the certificate of conversion.
 - The certificate of formation of a limited liability company formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
 - If the certificate of formation of the Texas limited liability company fails to comply with the requirements of sections 3.005 and 3.010 of the BOC, the certificate of conversion cannot be filed.
 - If the converted entity is a foreign limited liability company, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - A domestic limited partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and 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. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the

conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to 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 a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign limited partnership to a Texas limited liability company is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation for the limited liability company).
 - The fee for conversion of a Texas limited partnership into a foreign limited liability company is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and is required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

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