

Form 646—General Information
(Certificate of Conversion of a Texas General Partnership
Converting to a Texas Filing Entity)

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 Texas general partnership, including a Texas general partnership registered as a limited liability partnership, may convert into a different type of domestic entity by adopting a plan of conversion in accordance with sections 10.101 and 10.107 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.

Purpose of Form: 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 may be used when a Texas general partnership is the converting entity and the converted entity is a domestic filing entity formed with the secretary of state under the BOC, namely, a Texas for-profit, nonprofit, or professional corporation, professional association, limited liability company, professional limited liability company, limited partnership, or cooperative association.

Withdrawal of Partnership’s Registration as a Limited Liability Partnership: The filing of a conversion by a Texas general partnership that has registered as a limited liability partnership does not automatically terminate the partnership’s registration. The partnership must separately file a withdrawal notice to terminate its limited liability partnership registration. BOC § 152.802(f). See Form 704 for more information.

The conversion of a Texas general partnership into a foreign entity of any type does not require the filing of a certificate of conversion with the secretary of state. BOC § 10.154(a). A certificate of conversion that converts a Texas general partnership into a Texas real estate investment trust (REIT) would be filed with the county clerk. BOC § 4.009(a).

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 general partnership.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion must set forth the legal name of the converted entity. You must identify the organizational form of the converted entity by checking the box of one of the entity types listed. The jurisdiction of formation of the converted entity is included as a pre-printed statement.
 - **Converted Entity Name:** The name of the converted Texas filing entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as the name of any existing domestic or foreign filing entity, any fictitious name under which a foreign filing entity is registered to transact business in this state, any name reservation or registration, or the name of any existing registered series of a domestic limited liability company filed with the secretary of state, or if notarized written consent for the use of a similar name is required but cannot be obtained, the conversion 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 or Alternative Statements in Lieu of Plan:** Unless the converting general partnership 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 must be attached to the certificate of conversion.

In lieu of attaching the completed plan of conversion, the converting general partnership 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 Texas filing entity must be filed with the certificate of conversion.

If the completed plan of conversion is attached to the certificate of conversion, the certificate of formation may be included as part of the plan of conversion or as an exhibit to the plan. Otherwise, if the converting general partnership converting entity opts to include the certifying statements in lieu of providing the complete plan of conversion, the certificate of formation must be attached to the certificate of conversion.

The certificate of formation of a Texas filing entity formed under a plan of conversion must include a statement to that effect as well as provide the name, address, date of formation, prior form of organization, and jurisdiction of formation of the converting entity. BOC § 3.005(a)(8).

If the certificate of formation for the converted Texas filing entity fails to comply with the requirements applicable to the entity under subchapter A of chapter 3 of the BOC, the certificate of conversion cannot be filed.

- **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 general partnership.
 - The partnership agreement of a converting Texas general partnership must contain provisions that authorize the conversion provided for in the plan of conversion. BOC § 10.107(b).
 - A Texas general partnership must approve a plan of conversion in the manner provided in its partnership agreement. BOC § 10.107(c).
- **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 specified date, or specified date and time, 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. See Form 805 for more information.

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 converted Texas filing entity will be shown as "In existence" on the records of the secretary of state.

- **Tax Certificate:** A general partnership, other than a limited liability partnership, that is comprised solely of individuals is not liable for franchise taxes. However, the secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid or the certificate does not provide that the converted entity is liable for the payment of the required franchise taxes. BOC § 10.156.
 - Unless the converting entity opts to provide the alternative statement regarding payment of franchise taxes, 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 payment 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 printout of the converting entity's franchise tax account status obtained from the Comptroller's website is not sufficient.* Contact the Comptroller for assistance in obtaining the necessary certificate by e-mail at tax.help@cpa.texas.gov or by phone at (800) 252-1381 (toll-free) or (512) 463-4600.
 - In lieu of a tax certificate, the converting entity may opt to 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 general partnership in regard to the filing instrument.

A certificate of conversion filed by a general partnership must be signed by a partner of the partnership. If the partner is organized as a legal entity, such as a corporation or limited liability company, an authorized governing person or managerial official of that entity would sign the certificate. In that case, the execution block should include the legal name of the general partner as well as the authorized representative and indicate the capacity in which the individual is signing.

The certificate of conversion 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 a certificate of conversion of a Texas general partnership is **\$300 plus the filing fee for the certificate of formation of the converted Texas filing entity** (typically \$300; \$25 for nonprofit corporations and cooperative associations; \$750 for professional associations and limited partnerships).

Fees may be paid by: (1) a personal check or money order payable through a U.S. bank or financial institution and made payable to the secretary of state; (2) a funded LegalEase account; or (3) a prefunded secretary of state client account. Please include a payment form (Form 807) with a paper submission.

Submit the completed form(s) in duplicate along with the filing fee. The form(s) may be: (1) mailed to P.O. Box 13697, Austin, Texas 78711-3697; (2) faxed to (512) 463-5709; or (3) delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, Form 807 must accompany the transmission. 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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