

**AMENDMENT AND/OR RESTATEMENT OF THE ARTICLES OF ASSOCIATION
OF A TEXAS STATE BANKING ASSOCIATION**

In general, section 32.101 of the Texas Finance Code governs amendment and restatement of the articles of association of Texas state banking associations. Except for terminology (“articles” rather than “certificate” of amendment and reference to “articles of association” rather than “certificate of formation”) and some specific wording for amendments establishing a series of shares, the Finance Code requires compliance with the Texas Business Organizations Code (“BOC”) procedures and filings for amending or restating, with or without amendments, the certificate of formation of a for-profit business corporation. The following sections of the BOC should be consulted for guidance:

Amending or restating articles of association	BOC §§3.051-.060, §3.063
Board of directors acts to amend or restate	BOC §§21.052-.054, §21.056, §21.415
Shareholder action to amend	BOC §§6.201-.205, §21.055, §§21.352-.3531, §§21.364-.372

Amending the articles of association

A state bank may amend its articles of association at any time and in as many respects as may be desired, so long as the articles as amended contain only provisions permissible for a contemporaneously filed articles of association. The most common non-conformity in existing articles of association with current requirements is the designation of the city and county of the bank’s principal office, rather than the current requirement to state the street address of the bank’s home office. Thus, when amending articles of association, the article concerning the bank location should also be amended if needed to comply with the current required language. An amendment may change an existing article, add a new article or delete an existing article. Amendments are adopted as set forth in the appropriate sections of the BOC, as previously listed. After adoption, articles of amendment are filed with the Texas Department of Banking (“DOB”). The form of the articles of amendment is specified in §3.053 of the BOC. In general, the articles of amendment must include:

1. The name of the bank, including a recitation that it is a Texas state-chartered banking association. Confusion resulting from similar bank names can be avoided by also stating the bank’s charter number and the city in which its home office is located.
2. An identification by reference or description of each provision of the articles of association that is being altered, added, or deleted.
3. For provisions being altered or added, a statement of the text of the provision as altered or added.
4. A statement that the amendment or amendments have been approved in the manner required by the BOC and the governing documents of the bank.
5. A statement of the effective date (and time, if desired) of the amendments, if other than the date of filing and approval by the DOB. NOTE: The specified date and time, if any, cannot be before the filing is received by the DOB.

6. The signature of an officer of the bank. Notarization is not necessary.

Filing notes:

1. If an effective time is specified, it cannot be 12:00 (whether a.m. or p.m.)
2. Filing times are always Austin, Texas local time, so this does not need to be stated. Specifying another time zone is ineffective.
3. If the amendment is to change the name of the bank, careful consideration should be given to the effective date given the changes that will need to be made in documents, signage, advertising materials, and the like.
4. Whenever an address of a director is required, it may be either a residential or business address.

Filing. Two copies of the articles of amendment must be delivered to the DOB along with the \$300.00 filing fee. The delivery address is: Commissioner, Texas Department of Banking, 2601 N. Lamar Blvd., Austin, Texas 78705-4294. After review and approval, one original document is filed in the official records of the state bank and a certified file-stamped copy is returned for the bank's records.

The DOB does not provide forms for filing amendments. However, the following sample articles of amendment meet minimum statutory requirements, and may be used for guidance (text in brackets ([...]) should contain the correct specific wording for your amendment). Note that the actual amendments below are examples only, and are not required.

Articles of Amendment to the Articles of Association

1. The name of the state banking association is [AnyBank], [City], Texas, charter number [xxxx-xx].

2. The articles of association of [AnyBank] are amended as follows:

[a. Article I is changed to reflect the new name for the bank. The full text of Article I as amended is: The name of the bank is [AnyWhereBank].

b. Article III specifying the size of the initial board of directors is deleted, and replaced with the following: The number of directors may vary between 5 and 25, according to procedures set forth in the by-laws. The current number of directors is [6], and their names and addresses are as follows: . . .

c. Article IX is added to make indemnification of officers and directors mandatory, and its complete text is as follows: . . .]

3. The amendments have been approved in the manner required by the Business Organizations Code, the Finance Code, and the governing documents of the bank.

4. The amendments will be effective on [January 7, 2010 at 5:00 p.m.] NOTE: This statement is not needed if the amendments are to be effective upon filing and approval by the DOB.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated _____, _____.

[President (or other authorized officer)]

Restating the articles of association (without amendment)

At any point, a bank's effective articles of association are its original, restated, or corrected articles of association and any previous amendments to the articles still in effect, i.e., the last of what may be numerous amendments to alter the same provision (such as authorized shares of stock). The purpose of a restatement is to collect what may be a number of different amendments and the previous articles of association (whether original, restated, or corrected) into one document that will be the current articles of association. Articles of association may be restated at any time, but **must** be restated and included as an exhibit in the articles of merger for a state bank that is a resulting bank in a merger (even if there have been no amendments to the prior document). A restatement of the articles of association may be with or without new amendments.

A few changes may be made in restated articles without them being considered amendments:

1. If the articles of association currently in effect state only the size of the initial board of directors and their names and addresses, the restatement may update the current number of directors and the names and addresses (residence or business) of the current directors. However, if the current articles of association specify the number of directors in general (and not specifically the initial directors), a change in the size of the board will require an amendment.

2. Non-substantive changes such as the number of a specific article may be made without amendment (provided the actual text is not changed).

3. Articles that are no longer effective because of statutory changes may be deleted without amendment (the most obvious being a provision for operating under a system of deposit security that is no longer available).

4. If the physical location of the home office has not changed, but the current articles list only the city and county of domicile, the street address may be added without an amendment.

5. If the physical location of the home office has not changed, but the street address has changed by governmental action, the new address may be included without

amendment. In this case, the cover letter to the submission of the restatement should discuss the reason for the change.

Restated articles of association (without further amendment) must contain:

1. The name of the bank, including a recitation that it is a Texas state-chartered banking association. Confusion resulting from similar bank names can be avoided by also stating the bank's charter number and the city in which its home office is located.
2. A statement that the restatement accurately copies the articles of association and all amendments thereto that are in effect to date, and that the restatement contain no change in any provision [except changes which may be made without amendment pursuant to the BOC or DOB policy].
3. A statement that the restated articles of association has been approved in the manner required by the BOC and the governing documents of the bank.
4. A statement of the effective date (and time, if desired) of the restatement, if other than the date of filing and approval by the DOB. NOTE: The specified date and time, if any, cannot be before the filing is received by the DOB.
5. The signature of an officer of the bank. Notarization is not necessary.

Filing. Two copies of the restated articles of association must be delivered to the DOB along with the \$300.00 filing fee. The delivery address is: Commissioner, Texas Department of Banking, 2601 N. Lamar Blvd., Austin, Texas 78705-4294. After review and approval, one original document is filed in the official records of the state bank and a certified file-stamped copy is returned for the bank's records.

The DOB does not provide forms for restating article of association. However, the following sample restated articles of association meet minimum statutory requirements, and may be used for guidance (text in brackets ([...]) should contain the correct specific wording for your restatement, or deleted if not applicable).

Restated Articles of Association Without Further Amendment

1. [Anywhere State Bank], [Anywhere], Texas, charter number [xxxx-xx], hereby adopts restated articles of association. This restated articles of association does not make any amendment to the articles of association being restated.
2. The restated articles of association, which is attached, accurately copies the articles of association and all amendments thereto that are in effect to date, and contains no change in any provision [except the following changes which are permitted without amendment pursuant to the Business Organizations Code or Department of Banking policy:]

[a. The number, names, and addresses of the initial board of directors has been updated with the size, names, and addresses of the current board of directors.]

[b. The street address of the home office is included; the physical location of the home office has not changed since the filing of the previous articles of association, as amended.]

[c. Although the physical location of the home office has not changed, its street address was changed by action of [governmental authority], and the new street address is included in the restatement.]

[d. The current article [xx] relating to operation under the bond security system is deleted as that system no longer exists.]

3. The restated articles of association has been approved in the manner required by the Business Organizations Code, the Finance Code, and the governing documents of the bank.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated _____, _____.

[President (or other authorized officer)]

Restating the articles of association (with new amendments)

The required wording for restated articles of association when new amendments are made is a combination of that required to amend the articles and to restate without amendments. Note that the non-substantive changes noted above for restatement without amendments may be handled as described there, with suitably modified wording in the required statements, but as the procedures for amendment must be followed anyway, it is more straightforward simply to list them as an amendment. The following sample restated articles of association with new amendments assumes that all changes are listed as amendments.

Filing. Two copies of the restated articles of association must be delivered to the DOB along with the \$300.00 filing fee. The delivery address is: Commissioner, Texas Department of Banking, 2601 N. Lamar Blvd., Austin, Texas 78705-4294. After review and approval, one original document is filed in the official records of the state bank and a certified file-stamped copy is returned for the bank's records.

The DOB does not provide forms for filing restated articles of association. However, the following sample restated articles of association with new amendments meet minimum statutory requirements, and may be used for guidance (text in brackets ([...]) should contain

the correct specific wording for your restatement, or deleted if not applicable). Comments are in *italics* and are not to be part of the filed document.

Restated Articles of Association
With New Amendments

1. [AnyBank], [Anywhere], Texas, charter number [xxxx-xx], hereby adopts restated articles of association. The restated articles of association makes new amendments to the articles of association being restated.

2. The articles of association of [AnyBank] are amended as follow:

[a. Article I is changed to reflect the new name for the bank. The full text of Article I as amended is: The name of the bank is [AnyWhereBank].

[b. Article III specifying the size of the initial board of directors is deleted, and replaced with the following: The number of directors may vary between 5 and 25, according to procedures set forth in the by-laws. The current number of directors is [6], and their names and addresses are as follows: . . .]

[c. Article IX is added to make indemnification of officers and directors mandatory, and its complete text is as follows: . . .]

FILING NOTE: It also would be acceptable, in lieu of stating the revised text here, to reference the full text of the new/revised article as set forth in the attached restated articles of association.

3. Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code and the Finance Code. The amendments to the articles of association and the restated certificate of association have been approved in the manner required by the Business Organizations Code, the Finance Code, and the governing documents of the bank.

4. The restated articles of association, which is attached to this filing document, accurately states the text of the articles of association being restated and each amendment to the articles of association that is in effect, and as further amended by the restated articles of association. The attached restated articles of association does not contain any other change in the articles of association being restated [except that information about the size and members of the current board of directors replaces the information relating to the initial board of directors.]

5. The restated articles of association become effective [when filed and approved by the Department of Banking] *or* [Month] [day], [year] at [time] *or* [upon the occurrence of a specified event] which date must be not later than the 90th day after this instrument is signed.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated _____, _____.

[President (or other authorized officer)]