

**RIGHTS TO INFORMATION OF OWNERS
AND GOVERNING PERSONS OF TEXAS ENTITIES
UNDER THE TEXAS BUSINESS ORGANIZATIONS CODE**

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RIGHTS TO INFORMATION OF OWNERS AND GOVERNING PERSONS OF TEXAS ENTITIES UNDER THE TEXAS BUSINESS ORGANIZATIONS CODE

The Texas Business Organizations Code (the “TBOC”) contains various provisions governing the rights of owners and governing persons of Texas entities to review, “inspect” or “examine” the books and records of such entities. This paper focuses on those statutory information rights with respect to for-profit corporations, nonprofit corporations, limited liability companies, limited partnerships and general partnerships.

Each Texas filing entity¹ is subject to the provisions in Title 1, Chapter 3 of the TBOC granting an explicit right to the entity’s governing persons to examine its books and records for a purpose reasonably related to the governing person’s service as such. On the other hand, the rights of the owners of Texas entities are governed by the different titles of the TBOC governing each different type of entity. This paper first summarizes the provisions of the TBOC requiring the retention of books and records by each different type of entity. Then, this paper summarizes the provisions of the TBOC governing the rights of governing persons to information and the rights of owners to information with respect to the different types of entities.

I. RECORDS RETENTION REQUIREMENTS

A. General.

Section 3.151² specifies the books and records required to be kept by a Texas filing entity. Each filing entity must keep:

- a) books and records of accounts,
- b) a current record of the name and mailing address of each owner or member of the filing entity at its registered office or principal place of business or at the office of its transfer agent or registrar, and
- c) any other books and records as required by the title of the TBOC governing the entity.

In addition, filing entities other than limited partnerships or limited liability companies must maintain minutes of the proceedings of their owners, members or governing authorities and any committees thereof.³ For limited partnerships or limited liability companies, however, this requirement may be imposed by their governing documents.⁴ The foregoing books and records may be in written paper form or another form capable of being converted into written paper form within a reasonable time.⁵

B. Limited Partnerships.

Section 153.551 specifies the supplemental books and records required to be maintained by a Texas limited partnership. This information includes the following:

- 1) a current list that states the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners; the last known street address of the business or residence of each general partner; the percentage or other interest in the partnership owned by each partner; and the names of the partners who are members of each class or group of partners if one or more classes or groups are established under the partnership agreement;
- 2) a copy of the limited partnership’s federal, state and local information or income tax returns for each of its six most recent tax years, the partnership agreement and certificate of formation and all amendments or restatements thereof;
- 3) copies of any document that creates classes or groups of partners in the manner provided by the partnership agreement;
- 4) an executed copy of any powers of attorney under which the partnership agreement, certificate of formation and any amendments or restatements thereto have been executed;
- 5) unless contained in a written partnership agreement, a written statement of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner or that each partner has agreed to make in the future, the events requiring or the date on which additional contributions to be made, the events

¹ The phrase “filing entity” is defined in the TBOC to mean a corporation, limited partnership, limited liability company, professional association, cooperative or real estate investment trust. TBOC §1.002(22).

² In this paper, the reference to a “Section” is to a Section of the TBOC, unless otherwise stated.

³ TBOC §3.151(a).

⁴ TBOC §3.151(c).

⁵ TBOC §3.151(d).

requiring the winding up of the limited partnership and the date on which each partner became a partner; and

- 6) books and records of the accounts of the limited partnership.⁶

The foregoing records must be retained in written form or in another form capable of being converted to a written form in a reasonable time.⁷ In addition, a limited partnership must keep in its registered office in Texas a street address of its principal office in the United States in which the required records are maintained.⁸

C. Limited Liability Companies.

Section 101.501 specifies the supplemental books and records required to be maintained by a Texas limited liability company, which are similar to those required for limited partnerships. The list of required information includes:

- 1) a current listing of the percentage or other interest in the limited liability company owned by each member and, if one or more classes or groups of membership interests exist, the names of the members of each specified class or group,
- 2) a copy of its federal, state and local tax information or income tax returns for each of the six preceding tax years,
- 3) a copy of its certificate of formation, including any amendments or restatements,
- 4) a copy of its company agreement, including any amendments or restatements, if it is in writing,
- 5) an executed copy of any powers of attorney,
- 6) a copy of any document that establishes a class or group of members, and
- 7) unless contained in a written company agreement, a written statement of the amount of cash contribution and a description and statement of the agreed value of any other contribution made or agreed to be made by each member, the dates any additional contributions are to be made by a member, any event the occurrence of which requires a member to make additional contributions or requires the winding up of the company and

the date each member became a member of the company.⁹

The Company must also keep at its registered office in Texas the street address of its principal office in the United States in which the records required by Sections 3.151 and 101.501 are maintained or made available.¹⁰

D. General Partnerships.

Section 152.212 specifies that a general partnership shall keep its books and records, if any, at its chief executive office.¹¹ The qualification “if any” in this section implies that there is no formal requirement to maintain books and records imposed by the TBOC on general partnerships. However, the duties imposed on the partnership and each of the partners by the TBOC and applicable case law may implicitly require such books and records to be maintained. Indeed, Section 152.213 imposes upon each partner and the partnership an obligation to furnish complete and accurate information concerning the partnership to any partner, the legal representative of a deceased partner or a deceased or disabled partner or an assignee of a partner.¹² It is doubtful that a partnership could satisfy this obligation without maintaining some reasonable books and records.

E. Nonprofit Corporations.

Section 22.352 specifies requirements regarding financial records for those nonprofit corporations that are not exempted, as discussed below. Those nonprofit corporations must maintain current and accurate financial records with complete entries as to each financial transaction, including income and expenditures, in accordance with generally accepted accounting principles.¹³ Based on these records, the board of directors must annually prepare or approve a financial report for the corporation for the preceding year, and this report must conform to accounting standards as adopted by the American Institute of Certified Public Accountants and must include:

- 1) a statement of support, revenue and expenses,
- 2) a statement of changes in fund balance,
- 3) a statement of functional expenses, and

⁶ TBOC §153.551.

⁷ TBOC §153.551(b).

⁸ TBOC §153.552(c).

⁹ §101.501(a), (b).

¹⁰ TBOC §101.501(c).

¹¹ TBOC §152.212(b).

¹² TBOC §152.213(a).

¹³ TBOC §22.352(a).

- 4) a balance sheet for each fund.¹⁴

Those corporations must also keep records, books and annual reports of the corporation's financial activity at its registered or principal office in Texas for at least three years after the close of the fiscal year. The foregoing requirements do not apply to the following types of nonprofit corporations:

- a) those that solicit funds only from members of the corporation,
- b) those that do not intend to solicit and receive, and do not actually raise or receive, contributions exceeding \$10,000 from any source other than its own membership,
- c) certain kinds of private or independent institutions of higher education and related foundations,
- d) churches and certain other religious institutions,
- e) a trade association or professional society whose income is derived from membership dues and assessments, sales or services,
- f) an insurer licensed and regulated by the Texas Department of Insurance, or
- g) a recognized and acknowledged alumni association of an institution of higher education in Texas.¹⁵

F. For-Profit Corporations.

Section 21.173 specifies the supplemental books and records required to be maintained by a Texas for-profit corporation. This required information includes a record of:

- 1) the original issuance of shares issued by the corporation,
- 2) each transfer of those shares that have been presented for registration of transfer,
- 3) the names and addresses of all past shareholders of the corporation, and
- 4) the number and class or series of shares issued by the corporation held by each current and past shareholder.¹⁶

In addition, Section 21.372 obligates the officer or agent of a corporation in charge of the corporation's share transfer records to prepare, not later than the 11th day before the date of each shareholders' meeting, an

alphabetical list of shareholders entitled to vote at the meeting that states:

- a) the address of each shareholder,
- b) the type of shares held by each shareholder,
- c) the number of shares held by each shareholder, and
- d) the number of votes to which each shareholder is entitled, if different than the number of shares.¹⁷

II. RIGHTS OF GOVERNING PERSONS TO INFORMATION

The TBOC is explicit that a governing person of a Texas filing entity, other than a limited partnership, may examine the entity's books and records for a purpose reasonably related to the governing person's service as a governing person.¹⁸ The books and records subject to examination are not limited to those required to be kept under Section 3.151, but include all books and records reasonably related to the governing person's service as such.¹⁹ A court may require a Texas filing entity, other than a limited partnership, to open the books and records of the entity to permit a governing person to inspect, make copies of, or take extracts from the entity's books and records on a specific showing by the governing person that (1) the person is a governing person and demanded in good faith to inspect the entity's books, which was refused by the entity, and (2) the person's purpose for inspecting the entity's books and records is reasonably related to the person's service as a governing person.²⁰ The court may also award a governing person attorneys' fees and any other proper relief in the suit to require the company to open its books and records.²¹

The foregoing provisions were derived in the TBOC from similar provisions contained in former Article 2.44B of the Texas Business Corporation Act (the "TBCA") specifying the rights of a director to examine the corporation's books and records. It should be noted that these provisions were added to the TBCA in 1991 and patterned on the then existing provisions of Section 220(d) of the Delaware General Corporation Law. These provisions represented a modification of the holding in the Texas case *Chavco Investment Co. v. Pybus*, 613 S.W.2d 806, 810 (Tex. Civ. App. – Houston [14th Dist.] 1981, writ ref'd n.r.e.), where the court held that the right of a director of a Texas

¹⁴ TBOC §22.352(b).

¹⁵ TBOC §22.355.

¹⁶ TBOC §21.173.

¹⁷ TBOC § 21.372(a).

¹⁸ TBOC §3.152(a).

¹⁹ Id.

²⁰ TBOC §3.152(b).

²¹ TBOC §3.152(c).

corporation to inspect the corporate books and records is absolute. These provisions qualified the corporate director's right in that the director could only examine books and records for a purpose reasonably related to the director's service as a director.

Recently, the right of a governing person to information regarding the entity has become the subject of dispute where a particular governing person is considered to serve as a representative of a particular owner or group of owners. In such a situation, the representative governing person may well be able to argue that his review of entity information is reasonably related to his service as a governing person. Such service, however, may not be exclusively or primarily for the interests of all owners, but for the special interests of the owner or owners represented by the representative governing person. Accordingly, the other governing persons may worry that confidential entity information examined by the representative governing person will be shared with and used by such owner or owners. For an interesting recent Delaware case in the corporate context discussing these issues, see *Kalisman v. Friedman*, C.A. No. 8447-VCC, letter op. (Del. Ch. April 17, 2013).

III. RIGHTS OF OWNERS TO INFORMATION

A. Limited Liability Companies.

Each member of a Texas limited liability company has the explicit right under Section 101.502 to examine the books and records of the company, subject to reasonable restrictions in the company agreement of the company.²² A member or an assignee of a membership interest, or a representative of the member or assignee, on written request and for a proper purpose may examine and copy, at any reasonable time and at the member's or assignee's expense, not only the records of the company required to be kept by it, but also other information regarding the business, affairs and financial condition of the company that is reasonable for the person to examine and copy.²³ Nothing in the TBOC describes the types of limited liability company information, beyond the required books and records, that is subject to the inspection right or limits the exercise of the right in the limited liability company context to any proper purpose or purposes. The only statutory restriction is that the information be "reasonable" for the member or assignee to examine and copy.²⁴ In addition, the section requires a limited liability company to provide to a member or an assignee of the membership interest,

upon request and without charge, a copy of the company's certificate of formation (with any amendments or restatements), written company agreement (with any amendments or restatements) and any tax returns required to be maintained.²⁵

In 2011, the TBOC was amended to provide that a company agreement may not unreasonably restrict a member's or assignee's right of access to records and information of the limited liability company under Section 101.502.²⁶ The amendment removed Section 101.502 from the list in Section 101.054(a)(2) of provisions that cannot be modified or waived by the company agreement and added a new Section 101.054(e) to provide that the company agreement of a Texas limited liability company cannot unreasonably restrict the right of access to records and information under Section 101.502.²⁷ The TBOC does not include any description or list (whether exclusive or non-exclusive) of the restrictions that are or might be "reasonable." The authors believe that a confidentiality covenant regarding the information gained by access would be considered reasonable. It is not clear whether restrictions on access related to the class or size of the membership interest held or the time that it has been held – similar to the statutory restrictions applied to the shareholder of a for-profit corporation (as described below) – or related to the status of the member (e.g., a non-executive employee of the company) would be considered reasonable.

B. Nonprofit Corporations.

Under Section 22.351, a member of a nonprofit corporation is entitled to examine and copy at the member's expense, in person or by agent, accountant or attorney, at any reasonable time and for a proper purpose, the books and records of the corporation. The member must send a written demand to the corporation stating the purpose of the demand and only has the right to examine and copy the books and records relevant to that purpose.²⁸ Technically, the demand is not required to state a "proper purpose," but the examination must be for a "proper purpose." Several Texas decisions construing former Art. 1396-2.23 of the Texas Non-Profit Corporation Act, the provision that preceded Section 22.251, have stated that:

- 1) "In the absence of a showing that the right of inspection has been used by a member for

²⁵TBOC §101.502(b).

²⁶ TBOC §101.054(e).

²⁷ See TBOC §101.054(a)(2) prior to Sept. 1, 2011 and TBOC §101.054(e).

²⁸ TBOC §22.351.

²²TBOC §3.153.

²³TBOC §101.502(a).

²⁴ Id.

harassment or to impede the management of the corporation, the right of inspection is not limited in number and certainly not to only one inspection.”²⁹

- 2) A member’s “right to inspect and copy books and records... does not trump... other rights to confidentiality provided for by Texas law,” so that a member may be subject to corporate rules, policies or agreements regarding confidentiality to which the member has agreed by being a member.³⁰

Nonprofit corporations that must maintain the supplemental financial records described above under “Records Retention Requirements – Nonprofit Corporations” must also make their records, books and reports available to the public for inspection and copying at their registered or principal offices during regular business hours. The corporation can charge a reasonable fee for preparing a copy of a record or report.³¹ These corporations commit a Class B misdemeanor criminal offense if they fail to maintain a financial record, prepare an annual report or make the record or report available to the public in the manner required by the TBOC.³²

C. For-Profit Corporations.

Section 21.218(b) grants a “holder of shares” of a Texas for-profit corporation the right to examine and copy, at a reasonable time, the corporation’s relevant books, records of accounts, minutes and share transfer records. The holder of shares must make written demand stating a proper purpose and must either (1) have owned shares for at least six months immediately preceding the holder’s demand or (2) own at least 5% of the outstanding shares of the corporation. Examination may be conducted in person or through an agent, accountant or attorney. This right is subject to the governing documents of the corporation.³³ In addition, under Section 21.218(c), a court, on proof of proper purpose by a beneficial or record holder of shares, may compel the production for examination by the holder of the books and records of account, minutes and share transfer records of the corporation. This right to apply to a court to order inspection – which may be a statutory acknowledgment of a common-law

inspection right that is not negated or abrogated by the right granted in Section 21.218(b) – exists regardless of the period during which the holder was a beneficial holder or record holder and regardless of the number of shares held by that person.³⁴ The holder of a beneficial interest in a voting trust entered into under Section 6.251 is a holder of the shares represented by the beneficial interest for purposes of the foregoing rights.³⁵ Also, a shareholder’s pledge of shares as collateral for indebtedness does not affect his ability to exercise his statutory inspection right.³⁶

In addition to the foregoing inspection or examination rights, a for-profit corporation must mail to any shareholder on written request:

- 1) the annual statement of the corporation for the last fiscal year that contains in detail its assets and liabilities and the results of its operations, and
- 2) the most recent interim statements, if any, that have been filed in a public record or other publication.

The corporation is allowed a reasonable time to prepare the annual statements.³⁷

Also, the shareholder meeting list required by Section 21.372 must be available for inspection by a shareholder, during regular business hours, for at least ten days before the shareholders’ meeting and must be produced and kept open at the shareholders’ meeting.³⁸

A for-profit corporation that refuses to allow a person to examine and make copies of account records, minutes and share transfer records under Section 21.218 is liable to the shareholder for any cost or expense, including attorneys’ fees, incurred in enforcing the shareholder’s inspection right. This liability is in addition to any other damages or remedy afforded to the shareholder by law.³⁹ The corporation has a defense to an action brought to examine and make copies of its account records, minutes and share transfer records if the suing person:

²⁹ *Citizens Ass’n for Sound Energy v. Boltz*, 886 S.W.2d 283, 290 (Tex. App. – Amarillo 1994, writ denied).

³⁰ *Gaughan v. National Cutting Horse Ass’n*, 351 S.W.3d 408, 418-20 (Tex. App. – Fort Worth 2011, pet. denied).

³¹ TBOC §22.353.

³² TBOC §22.354.

³³ TBOC §21.218(b).

³⁴ TBOC §21.218(c).

³⁵ TBOC §21.218(a). It appears that a person who is not the record holder of shares, but is only a beneficial owner of shares other than under a voting trust, cannot exercise the inspection right; but this is not clear.

³⁶ *Fort Worth KJIM, Inc. v. Walke*, 604 S.W.2d 362, 363 (Tex. Civ. App. – Fort Worth 1980, writ ref’d n.r.e.).

³⁷ TBOC §21.219.

³⁸ TBOC §§21.354 & 21.372(a)(2).

³⁹ TBOC §21.222(a).

- a) has, within the two years preceding the date the action is brought, sold or offered for sale a list of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation,
- b) has aided or abetted a person in procuring a list of shareholders or holders of voting trust certificates for the same purpose,
- c) has improperly used information obtained through a prior examination of such records, minutes or share transfer records of the corporation or any other corporation, or
- d) was not acting in good faith or for a proper purpose in making the request for examination.⁴⁰

If any of the requirements applicable to the shareholder meeting list for any shareholder's meeting is not satisfied, either the officer or agent responsible for the list or the corporation, depending on the reason for the failure to satisfy the requirement, is liable to a shareholder who suffers damages because of the failure for the damage caused by the failure.⁴¹

Section 21.218(b), which grants the statutory inspection right, does not:

- 1) Specify a minimum advance time for the notice to conduct an inspection – The inspection is to occur only at a “reasonable time,” which is typically negotiated and agreed to by the corporation and the inspecting shareholder or his representative.
- 2) Specify where the inspection must occur – The inspecting shareholder or his representative may have to conduct the inspection where the records are kept or at a reasonably convenient place for the corporation (e.g., its executive offices).⁴² This also is typically negotiated and agreed to by the parties.
- 3) Require the demanding shareholder to specify the particular person or persons who will be inspecting or to provide proof of any representative's authority (like a power of attorney) – The inspection demand, however, often describes the representatives who will be inspecting, at least in general terms (e.g.,

the shareholder's counsel or accountant or accounting firm).

These matters, however, would typically be addressed in a court-ordered inspection of the kind permitted by Section 21.218(c).

Although not required under Section 21.218(b), the inspection demand often provides a list of the materials that the demanding shareholder wishes to inspect or examine, though that list may be non-exclusive. The materials subject to inspection certainly include the books and records that a corporation is required to keep under Sections 3.151 and 21.173 (as described above) as well as other books and records. The TBOC does not include a definition of “books” or “records of account” as used in Section 21.218(b), and the authors could not find any recent Texas court decision that addresses the issue. Commentators and older Texas court decisions, however, indicate that the books and records subject to inspection should be broadly construed.⁴³ The only real limit to the materials subject to inspection, therefore, is what is relevant to the purpose or purposes of the inspection.⁴⁴

The key issue regarding the exercise of inspection rights (other than to examine a shareholder list) appears to be the “proper purpose” for inspection. The TBOC and Texas law do not contain a definitive definition or description of “proper purpose.” A leading commentator generally describes a “proper purpose” as a purpose “bearing upon the protection of the shareholder's interest and that of other shareholders in the corporation.”⁴⁵

While recent court cases in Texas are very sparse on the rights of shareholders to inspect corporate records, several Texas court decisions – both recent and older – address the “proper purpose” issue. For example:

- a) In *In re Dyer Custom Installation, Inc.*, 133 S.W.3d 878 (Tex. Civ. App. – Dallas 2004, no pet.), the court ruled that a jury issue arose as to a shareholder's proper purpose for inspection of the corporation's

⁴⁰ TBOC §21.222(b).

⁴¹ TBOC §§ 21.220 & 21.221.

⁴² In *Ritchie v. Rupe*, 339 S.W.3d 275, 304-05 (Tex. App. – Dallas 2011, pet. granted), the court upheld the corporation's insistence that certain original books, for their “protection and integrity,” remain on the corporation's premises to be copied.

⁴³ See, e.g., Miller & Ragazzo, 20 Texas Practice: Business Organizations §33.8 (2011) [hereafter “Miller & Ragazzo”]; *Johnson Ranch Royalty Co. v. Hickey*, 31 S.W. 150, 151-52 (Tex. Civ. App. - Amarillo 1930, writ ref'd).

⁴⁴ Court decisions have made it clear that a corporation cannot insist on providing the inspecting shareholder only extracts of records instead of the records themselves or copies of the records. E.g., *Cotton v. Weatherford Bancshares, Inc.*, 187 S.W.3d 687, 697-98 (Tex.App. – Fort Worth 2006, pet. denied).

⁴⁵ Miller & Ragazzo §33.8.

records. The corporation alleged that the shareholder wanted access to the information to (a) gain a competitive advantage in the marketplace, (b) harass the corporation and its officers and directors and attempt to gain control of the company or dissolve it, or (c) force the company to purchase his stock at a grossly inflated price or to force the other shareholders to sell their stock at a grossly inadequate price.

- b) In *Chavco Investment Company, Inc., v. Pybus*, 613 S.W.2d 806, 808 (Tex. Civ. App. – Houston [14th Dist.] 1981, writ ref’d n.r.e.), the court held that proper purposes for inspection included “ascertaining the value of [the shareholder’s] shares, examining expenditures, determining whether there was excessive compensation being paid to officers and directors, whether corporate funds were used for personal purposes, and whether there was corporate mismanagement.”
- c) In *Uvalde Rock Asphalt Co. v. Loughridge*, 425 S.W.2d 818, 819 (Tex. 1968), the court acknowledged, but did not hold, that the following purposes alleged by the demanding shareholder might be proper purposes:

“a determination of the causes and reasons for the precipitous decline in profits of the corporation; to assist and help the management of the corporation to reverse the adverse trend of the company’s business and operations during recent years; to ascertain the unprofitable aspects of the company’s business and operations; to examine generally into all expenditures in order to determine their reasonableness and wisdom; to determine whether excessive compensation is being paid to officers, directors or others close to management; to determine the extent to which stockholders have participated in stockholders’ meetings and action taken at such stockholders’ meetings, and generally to inquire into the details of the corporation’s operations and practices for the purpose of protecting their investment.”

The court also acknowledged, but did not hold, that the purposes for the inspection alleged by the corporation – to obtain a competitive advantage for a competing business and to “continue a program of studied harassment” of the corporation – were not proper purposes.

- d) In *Guaranty Old Line Life Co. v. McCallum*, 97 S.W.2d 966, 967 (Tex. Civ. App. – Dallas 1936, no writ), the court stated that a shareholder’s exercise of the inspection right “actuated by corrupt or unlawful motives” will not be enforced and that the right may not be exercised “for the purpose of injuring the corporation or stockholders generally.”
- e) In *Biolustré Inc. v. Hair Ventures LLC*, 2011 WL 540574, at *3 (Tex. Civ. App. – San Antonio 2011, no pet.), the court held that, because of the demanding shareholder’s “substantial investment and interest in the company” as a shareholder and a lender and because no shareholders’ meeting had been held for many years, “obtaining information about the financial position of the company and its proposed public offering was a proper purpose....” The court also stated that “being on unfriendly terms with a company and an intention to communicate the information obtained during the inspection with other stockholders are not proper reasons for denying” the inspection right.

Of course, a shareholder may have, or the corporation may believe that the shareholder has, more than the stated, allegedly proper purpose for an inspection. It may not be possible to determine the “true,” or ultimate or controlling, purpose and whether that purpose is “proper” except through litigation.

The inspection right under Section 21.218(b) extends not only to the books and records of the corporation in which the shareholder owns shares, but also to the books and records of the subsidiaries of the corporation.⁴⁶ The inspection right also permits the shareholder to make photocopies of the books and records.⁴⁷

⁴⁶ See *Cotton v. Weatherford Bancshares, Inc.*, 187 S.W.3d 687, 697 (Tex. Civ. App. – Fort Worth 2006, pet. denied), decided under former Art. 2.44B of the TBCA.

⁴⁷ *Id.*

D. General Partnerships.

A general partnership must provide access to its books and records to a partner or an agent or attorney of a partner.⁴⁸ In addition, similar access must be provided to a former partner or an agent or attorney of a former partner to books and records pertaining to the period during which the former partner was a partner, or for any other proper purpose, with respect to another period.⁴⁹ The foregoing access rights include the opportunity to inspect and copy books and records during ordinary business hours.⁵⁰ The partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents that are furnished under the foregoing requirements.⁵¹ A transferee or an assignee of a partnership interest is also granted the right, for a proper purpose, to “require reasonable information or an account of a partnership transaction and make reasonable inspection of the partnership books.”⁵²

In addition to the foregoing obligations, under Section 153.213(a), on request and to the extent just and reasonable, each partner and the partnership must furnish complete and accurate information concerning the partnership to a partner, the legal representative of a deceased or disabled partner or an assignee.⁵³ A legal representative of a deceased or disabled partner or an assignee of a partner is subject to the duties of a partner with respect to the information made available to them.⁵⁴

A partnership agreement may include restrictions on the access or inspection rights of a partner or a transferee or an assignee of a partnership interest, so long as the agreement does not “unreasonably restrict a partner’s right.”⁵⁵ Many, if not most, partnership agreements that address inspection rights include at least a confidentiality obligation with respect to information obtained through the exercise of the inspection right, and that kind of restriction appears to be reasonable. Also, a partner’s duty of loyalty in Section 152.205 and duty of care in Section 152.206 should apply to a partner’s, or his representative’s or assignee’s, use and treatment of partnership information, whether gained by exercise of the access

or inspection right or received from the partnership or another partner under Section 152.213(a).⁵⁶

E. Limited Partnerships.

Under Section 153.552, on written request stating a proper purpose, a partner or an assignee of a partnership interest may examine and copy, in person or through a representative, records required to be kept by a limited partnership (as described above in this paper) and other information regarding the business, affairs and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.⁵⁷ The foregoing records may be examined and copied at a reasonable time and at the partner’s (or assignee’s) sole expense.⁵⁸ The records required to be maintained by the limited partnership must be made available in the partnership’s principal office in the United States no later than the fifth day after the date on which the written request is received by the limited partnership.⁵⁹ A limited partnership must also make available to a partner upon reasonable request the street address of its principal office in the United States in which such records are maintained.⁶⁰ In addition to the foregoing examination right, on written request by a partner or an assignee of a partnership interest, the partnership must provide to the requesting partner or assignee without charge copies of the partnership agreement and certificate of formation of the limited partnership, and all amendments or restatements thereof, and any tax return required to be maintained by the limited partnership.⁶¹ This request must be made to a person who is designated to receive the request in the partnership agreement at the address designated therein or, if there is no such designation, a general partner at the partnership’s principal office in the United States.⁶²

A limited partnership agreement may include restrictions on the access or inspection rights of a

⁴⁸ TBOC §152.212(c). This provision does not refer to any proper or other purpose of the partner for obtaining access.

⁴⁹ TBOC §152.212(d).

⁵⁰ TBOC §152.212(a).

⁵¹ TBOC §152.212(e).

⁵² TBOC §152.404(d).

⁵³ TBOC §152.213(a).

⁵⁴ TBOC §152.213(b).

⁵⁵ TBOC §152.002(b)(1).

⁵⁶ A leading commentator has also indicated that court decisions pre-dating the TBOC have suggested that a partner may have a common-law duty to disclose information to other partners even without a “request” of other partners referred to in Section 152.213(a), but there is no court decision that has specifically held that such duty still applies or is subsumed under the statutory duties. *See* Miller & Ragazzo, 19 Texas Practice: Business Organizations § 7:14 (2011).

⁵⁷ TBOC §153.552(a).

⁵⁸ TBOC §153.552(b).

⁵⁹ TBOC §153.551(a).

⁶⁰ TBOC §153.551(c).

⁶¹ TBOC §153.552(c).

⁶² TBOC §153.552(d).

partner or an assignee of a partnership interest, so long as the agreement does not “unreasonably restrict a partner’s right.”⁶³ Again, many limited partnership agreements include a confidentiality obligation with respect to information obtained through the exercise of the inspection right, and that kind of restriction appears to be reasonable.

⁶³ TBOC §153.004(a)(3).

