

# Nuts and Bolts of LLCs, LPs and Partnerships

*Tips from the SOS*



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# Topics to Cover

- Entity names
- Assumed names
- Foreign entities
- Registered Agents
- LLPs
- Filings Aids/Options
- Business Programs and Resources



# Entity Names



# Determining Name Availability

SOS determines the availability of legal and fictitious names of corporations, limited liability companies, limited partnerships, and professional associations as well as name reservations and name registrations.



# Names not Considered

The following are not considered when making a name availability determination:

- Assumed Names
- LLPs
- State and Federal Trademarks
- Filings with the County Clerk
- Common law use



# Entity Name Availability Standard

## §§ 5.053, 5.102 & 5.153

- Distinguishable in the Records
  - *name is available*
- Same
  - *name is not available, even with consent*
- Available with Consent
  - *name is not distinguishable but is permitted with notarized consent*



# Examples of Names that are Distinguishable in the Records

- Certain conditions define when a name is considered DIR and therefore available:
  - Difference of one key word
  - Key words are the same but in a different order
  - Key words or contractions of key words are derived from the same root word
  - Key words are the same but in a different language
  - Key word or words sound the same but at least one word, on its face, has a different meaning or connotation
  - The key word or words are the same except for the addition, substitution, or omission of prepositions



# Examples of Names that are the Same

- Certain conditions define when a name is considered the same to an existing name.
  - Use of upper case or lower case letters, distinctive lettering or typeface, superscript or subscript letters or numerals.
  - Use of punctuation, accent marks, spaces, or other spacing symbols
  - Use of different articles or conjunctions
  - Repetition, absence or difference in letters





# Names Available with Consent

## *Certain conditions*

- Names are the same except for the existence, addition, substitution, or absence of a word, phrase, or abbreviation that identifies or indicates different types of entities
- Names are the same except for a common abbreviation
- Names are the same except for the singular, plural, possessive form if not readily distinguishable
- Only difference is the addition or omission of a state to a name that already includes a city



# Requirements for Consent

- Consent can be in any written format and signed by an officer or authorized agent of the consenting entity.
- Consent must be notarized
  - Consent is only implied for affiliated entities if they are simultaneously submitted.



# Requirements for Consent

- Consent cannot be withdrawn. SOS does not enforce any private agreements or conditions that parties may have regarding use or regarding consent.
- Consent must be submitted together with the document for which the consent has been obtained. Do not submit separately.



# How to Check Availability

- SOSDirect Name Availability Search
- Call (512) 463-5555
- Email [corpinfo@sos.texas.gov](mailto:corpinfo@sos.texas.gov)

This is a preliminary clearance.



# What To Do After Checking Name Availability With SOS

- Reserve Name
- Do not authorize client to execute contracts under proposed name or expend money utilizing the proposed name based on a preliminary clearance.
- *Final determination is made when the document is submitted for filing.*

1 TAC § 79.45



# Effect of Filing on Rights of Another

## § 5.001 BOC

Filing of a certificate of formation, application for registration, name reservation or name registration does not authorize the use of the name in Texas in violation of the rights of another under:

- Federal or state trademark law or
- Common law



# Assumed Name Certificates



# Assumed Names

## Chap. 71, B&CC

- Generally, assumed name certificate *must* be filed when a person does business under a name that differs from the person's legal name.
- Purpose—**NOTICE**
- Tells the public the identity of the person, business structure of the person and where they may be found.





# Assumed Names

## §71.002(2) B&CC

- **Assumed Name**—for an LLC, a name, other than the name stated in its certificate of formation.
  - includes the name of any series of the LLC established by its company agreement.



# Assumed Names – Filing Hints

- SOS does not check for “availability”.
- Cannot correct or amend an assumed name certificate.
  - File new certificate; may abandon outdated or incorrect certificate
- File on SOSDirect – turnaround in approx. two hours.



# Effect of Filing an Assumed Name

## § 71.155, B&CC

- Does not give registrant a right to use the assumed name in violation of the common or statutory law of unfair competition or unfair trade practices, common law copyright, or similar law.
- Filing does not constitute actual use of the assumed name stated in the certificate for purposes of determining priority of right.



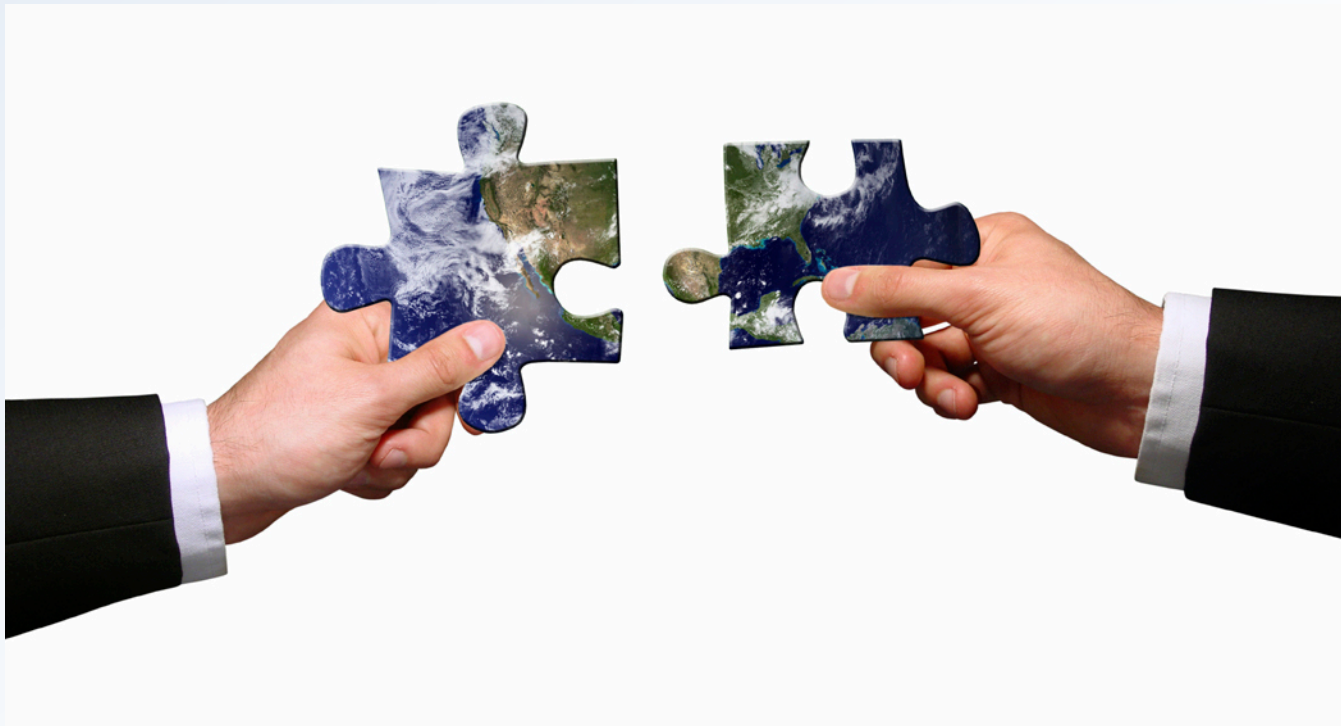
# Assumed Names

## §§ 71.201-71.203 B&CC

- Failure to file an assumed name:
  - Does not impair the validity of any contract or act of person using that assumed name
  - Does not prevent person from defending any action or proceeding



# Foreign Entity Issues



# Transaction of Business

- A foreign filing entity that transacts business in Texas must file an application for registration.
- Transacting business is not defined in the BOC.
- SOS cannot make a determination for an entity, but we do have resources available on our website.



# Resources for Determining Whether an Entity is Transacting Business in Texas

- Section 9.251 provides a list of activities that are not considered to be the transaction of business.
- Texas Nexus Questionnaire
- Case law (most states have similar provisions)
- OAG opinions



# Penalties for Failing to Register

- Inability to maintain an action, suit, or proceeding in Texas court
- Injunction from transacting business in Texas
- Civil penalty
- Late fees
  - SOS may condition registration on payment of the late fee. §9.054 BOC
  - Request to limit late fees to five years





# Foreign Entity – Name Issues

- The name standard in the state of formation may be different (or be applied differently) from the standard in Texas.
- If name is not available, you may need to register under a fictitious name.
  - Name under which business will be transacted in Texas
  - Need to file assumed name certificate



# Registered Agents



# Registered Agents

- An agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity.
- Who can be a registered agent:
  - Individual who is a Texas resident
  - Organization that is authorized to do business in Texas
- Must consent to serve



# Registered Office

- An entity's registered office must be a physical address in Texas where the registered agent can be served with process during business hours.
- The registered office is also where the Office of the Secretary of State will mail correspondence.
- Cannot be a post office box, commercial mail service (UPS office).



# Failure to Maintain a RA/RO

- Domestic and foreign filing entities are required to maintain a registered agent/office
- Failure to maintain may result in involuntary termination of domestic entity or revocation of foreign registration
- Rejection and resignation of appointment



# Considerations



- Make sure the registered agent/office meets the statutory requirements.
- Are there privacy concerns?
- The registered agent office address populates the initial Comptroller taxpayer mailing address.



# Limited Liability Partnerships



# What and Why?

- What is an LLP?
  - A registration made by a pre-existing general or limited partnership
  - Not a type of partnership
- Why register as an LLP?
  - Registration as an LLP provides personal liability protection for the general partners as described in Sec. 152.801





# How to register with the SOS – Texas LLP

- A Texas general or limited partnership may register as an LLP by submitting an application for registration (SOS Form 701)
  - Registration duration is perpetual unless withdrawn or terminated by SOS
  - Annual report requirement (SOS Form 713)



# How to register with the SOS – Foreign LLP

- A foreign GP or LP may register to transact business in Texas as an LLP by submitting a limited liability partnership application for registration (SOS Form 307)
  - Registration duration is one year and may be renewed (SOS Form 308)
  - If underlying partnership is LP, separate application for registration (SOS Form 306)



# Filing Aids and Options



# Delivery and Handling Options

Regular processing:

- Mail, fax, delivery
- 7-10 business days

SOSDirect:

- Within 2 business days from date of receipt



# Expedited Handling

- \$25 expedite fee
- Fax, personal delivery, or mail
- Processing by end of business day following date of receipt



# Expedited Handling

- Notification of processing is now sent by email. *Don't forget to provide your email address and review email sent.*
  - If document filed, email contains a link to the certificate of filing.
  - If rejected, email sent contains link to the rejection letter.
- File-stamped copy, if duplicate provided, is returned by regular mail.



# SOS Forms

- Use of SOS forms is permissive.
- Forms drafted to meet minimum statutory requirements.
- Can serve as a guideline for drafting a filing instrument or a checklist for ensuring compliance with code requirements.
- Failure to promulgate form does not mean that a document cannot be filed with the SOS.



# Date of Filing

- Date of filing is the date of receipt for documents that conform to law and for which the filing fee has been paid. 1 TAC § 79.9.

(Exception: Name reservations)

*Postmark rule does not apply.*

- When a document is corrected and resubmitted, the date of filing of the document will be the date of last receipt.





# Preclearance

- Recommended for complex or unusual transactions, especially mergers or conversions.
- Reduce risk of rejection on date of closing—submit draft for preclearance well before anticipated filing date.
- Identify submission as a preclearance request and submit \$50 filing fee + \$25 if you want expedited service.



# Preclearance

- SOS will issue a letter indicating that the draft document has been precleared for filing.
  - Note that preclearance letter is not a final approval.
- When document is submitted for filing, attach the preclearance letter; make sure the document has been properly executed and the correct filing fee has been submitted.



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- ▶ Health Spa Closures
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- ▶ Track your UCC filings
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# Newly Created Veteran-Owned Businesses

- Applies to new veteran-owned businesses created between January 1, 2016 and December 31, 2019.
- Exemption from BOC filing fees and Texas franchise taxes for the first five years of operation.



# Newly Created Veteran-Owned Businesses

- How to apply:
  - Letter of Verification (Texas Veterans Commission)
  - Certification of New Veteran-Owned Business (Form 05-904, Texas Comptroller of Public Accounts)
  - Certificate of formation
- Submit all documents together to SOS



# Business Filings Tracker

Documents will appear on the filing status list once they have been entered into the system. Allow at least one business day.

	819889980002	Behavioral and Consultant Nurses of South Texas LLC	Fax		06/15/2018	Legal entity filing document	Received	
<a href="#">view</a>	819444130002	Big Spring Armory, a Texas limited liability company	Mail		06/13/2018	Certificate of Formation	Filed	803048507
<a href="#">view</a>	814695640002	Biomerics Texas Holdings	Web		05/22/2018 01:05 PM	Application for Registration	Filed	803023270
<a href="#">view</a>	818904730003	Blue Sky Texas Boats LLC	Web		06/13/2018 10:06 AM	Certificate of Formation	Filed	803042160
<a href="#">view</a>	816623120002	Bon International West Texas Limited Liability Company	Web		06/01/2018 07:06 PM	Certificate of Formation	Filed	803032794
<a href="#">view</a>	820319880002	Boys and Girls Clubs of Navarro County, Texas Inc.	Fax	Yes	06/20/2018	Legal entity filing document	Rejected	



# Need Help?

## Contact SOS by Email

Name availability & general entity information:

[corpinfo@sos.texas.gov](mailto:corpinfo@sos.texas.gov)

Request copies or certificates of fact:

[corpcert@sos.texas.gov](mailto:corpcert@sos.texas.gov)

Legal questions relating to filing issues:

[corphelp@sos.texas.gov](mailto:corphelp@sos.texas.gov)

SOSDirect assistance & issues:

[sosdirect@sos.texas.gov](mailto:sosdirect@sos.texas.gov)





# Thank You



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