

Presented:28th Annual LLCs, LPs and PartnershipsJuly 17, 18-19, 2019
Austin, TX**Update from the Office of the Secretary of State****Carmen I Flores
Briana Godbey**

Author contact information:

Carmen I. Flores
Office of the Texas Secretary of State
Austin, TX 78711
cflores@sos.texas.gov
512-463-5588Briana Godbey
Office of the Texas Secretary of State
Austin, TX 78711
bgodbey@sos.texas.gov
512-463-5590

Table of Contents

I.	THE TEXAS BUSINESS LANDSCAPE.....	1
II.	ENTITY NAMES	1
A.	Names Must Be Distinguishable.....	1
B.	Three Tiered Name Standard	2
C.	Name Clearance—A Trap for the Unwary	4
D.	Troublesome Words.....	4
E.	Limited Partnership Name Issues	6
F.	Name Reservations	6
G.	Fictitious Names	8
H.	Assumed Names.....	8
III.	SERIES LLCs AND NONPROFIT LLCs.....	10
A.	The Texas Series LLC.....	10
B.	Notice of Limitations	10
C.	Establishment of a Series	11
D.	Service of Process on a Series of an LLC	11
E.	Nonprofit Limited Liability Companies.....	12
IV.	PROFESSIONAL ENTITIES—TO BE OR NOT TO BE	13
A.	Is Entity Providing a Professional Service?	13
B.	What Type of Entity Should Be Formed?.....	13
C.	Joint Ownership and Practice.....	14
D.	Physicians and Physician Assistants	15
E.	Certificate of Formation Issues	15
F.	Name Issues for Professional Entities.....	16
V.	LLPS—ANNUAL REPORTS.....	17
A.	Domestic LLP Registration—Annual Reports.....	17
B.	LLP Registration—Delinquency.....	17
C.	LLP Registration—Termination and Reinstatement.....	18
VI.	LLPS—SOME ISSUES REMAIN THE SAME	19
A.	LPs Registered as LLPs	19
B.	Facilitating Linkage Between the LP and LLP Records	19
C.	Common Reason for Rejection of a Registration	20
VII.	FOREIGN ENTITIES—REGISTRATION ISSUES	20
A.	Entities Required to Register	20
B.	Failure to Register.....	21
C.	Late Filing Penalty	21
D.	Late Filing Penalty Caps	22
E.	Transfer/Succession of a Foreign Registration	23
F.	Required Amendments.....	24
VIII.	FOREIGN PARTNERSHIPS AND LLCs	25
A.	Foreign LLPs	25
B.	Registration of Foreign Series LLCs and LPs.....	26
C.	Registration of Foreign Professional Entities	27
IX.	POST FORMATION MAINTENANCE ISSUES.....	27
A.	Maintenance of Registered Agent/Office.....	27
B.	Periodic Reports and Public Information Reports—Limited Partnerships	28
X.	REINSTATING AN INACTIVE DOMESTIC ENTITY	30
A.	Forfeited Existence—Chapter 171 Tax Code	30

B.	Reinstatement—Chapter 171 Tax Forfeiture	30
C.	Involuntary Terminations—Chapter 11 BOC	31
D.	Reinstatement—Chapter 11 BOC Involuntary Termination.....	32
E.	Failure to File Periodic Report—Chapter 153 BOC Involuntary Terminations	33
F.	Reinstatement After Involuntary Termination-Chapter 153	33
G.	Reinstatement After Voluntary Termination-Chapter 11 BOC	34
H.	Intervening Events May Give Rise to Rejection.....	34
XI.	MERGERS.....	35
A.	Authority and Scope of a BOC Merger.....	35
B.	Other Terms Defining Scope of Transaction/Filing.....	36
C.	Certificate of Merger Required.....	37
D.	Alternative Certified Statement in Lieu of a Plan of Merger	37
E.	Special Merger Provisions under the BOC	38
F.	Common Errors to Avoid.....	39
XII.	CONVERSIONS.....	39
A.	Certificate of Conversion	40
B.	Common Errors to Avoid.....	41
C.	Nonprofit Conversions.....	42
D.	How to Avoid Last Minute Problems with Tax Clearance	42
XIII.	OTHER MERGER AND CONVERSION ISSUES	42
A.	Corrections to Mergers or Conversions	42
B.	Abandonment of Mergers and Conversions.....	43
C.	Merger and Conversion Forms	44
XIV.	FRANCHISE TAX ACCOUNT STATUS	45
A.	Account Status Determined by Entity’s Right to Transact Business	45
B.	Comptroller Account Terminology.....	45
XV.	POST FORMATION CORRECTIONS AND RESTATEMENTS.....	46
A.	Certificates of Correction 101	46
B.	Restated Certificates of Formation—Drafting Issues	47
XVI.	LEGISLATIVE UPDATE	47
XVII.	DOING BUSINESS WITH THE SECRETARY OF STATE	48
A.	Ministerial Duties.....	49
B.	Accessing Information	49
	ENDNOTES	51
	Appendix A—Drafting Guide for Series LLC Assumed Name	

Update from the Office of the Secretary of State



I. THE TEXAS BUSINESS LANDSCAPE

The office continues to see an increase in the number of domestic entity formations due in large part to the increase in limited liability company formations. In 2018, the secretary of state filed 234,942 certificates of formation, which represents a 13.76% increase in new formation filings when compared to 2017. The breakdown of domestic formations is provided below:

Entity Type Description	2017	2018
For-profit Corporation	21,938	24,135
Nonprofit Corporation	12,339	12,830
Professional Corporation	719	686
Professional Association	432	408
Limited Liability Company	166,589	192,284
Limited Partnership	4,516	4,599
Totals:	206,533	234,942

The upward trend continues in 2019. During March of 2019, the Secretary of State filed 22,038 certificates of formation creating new Texas corporations, professional associations, limited liability companies and limited partnerships. This is a new high-water mark for business entity formations. During the first quarter of 2019, the secretary of state file 63,389 certificates of formation creating new Texas corporations, professional associations, limited liability companies and limited partnerships. This represents a 5.78% in new business formations when compared to quarter 1 of 2018. As evidenced by the statistics, the limited liability company is the entity of choice. As of June 1, 2019, limited liability companies make up approximately 61% of the total population of active domestic entities.

II. ENTITY NAMES

A. Names Must Be Distinguishable

On June 1, 2018, House Bill 2856, 85th Legislature, Regular Session, became effective changing the Texas name availability standard from “the same or deceptively similar” to “distinguishable in the records” and bringing Texas into line with the name availability standards of most other jurisdictions.

1. Section 5.053 of the Business Organizations Code (BOC) sets forth the new general standard for name availability; namely, a filing entity name must be distinguishable in the records of secretary of state from 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, or any name reservation or registration filed with the secretary of state. The administrative rules used to determine the availability of entity names are contained in §§79.30-79.46 of Title 1, Part Four of the Texas Administrative Code (TAC), which may be viewed at <https://www.sos.texas.gov/tac/index.shtml> A copy of the rules are found as an appendix to this article.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Update from the Office of the Secretary of State

Also available as part of the eCourse

[2019 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the
28th Annual LLCs, LPs and Partnerships session

"Secretary of State Update"