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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.

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