

PRESENTED AT

2015 Primer: Nuts and Bolts of LLCs, LPs, and Partnerships

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Basic Resources from the Office of the Secretary of State

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Table of Contents

I.	GUIDE TO TERMINOLOGY USED BY THE SECRETARY OF STATE	1
A.	Certifications and Active Status Descriptions.....	1
B.	Descriptions Relating to an Inactive Status	1
C.	Other Terminology Used by Secretary of State	3
II.	SOS GUIDE TO PERMISSIBLE ENTITY TYPES—APPENDIX A	3
III.	FEES AND PAYMENT OPTIONS—APPENDIX B	7

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I. GUIDE TO TERMINOLOGY USED BY THE SECRETARY OF STATE

A. Certifications and Active Status Descriptions

1. If you are asked to provide a “certificate of existence” for your client’s closing or foreign qualification, order a certificate of fact-status from the Secretary of State. Section 4.005(d) of the Business Organizations Code provides that a certificate of status issued by the Secretary of State stating that the Texas entity is *in existence* is conclusive evidence of the entity’s existence.

2. A certificate of fact-status provides the legal name of the entity, the date of its formation, and the current status in the records of the secretary of state. If the entity’s current status is an inactive status, the certification provides the date of the entity’s inactive status was effected and a short description of the inactive status. If the entity has an active status, the certification states that the entity is “in existence.”

3. An entity that has an active status (i.e., that has not been judicially, voluntarily or involuntarily terminated or forfeited under the Tax Code), but that has an outstanding notice, deficiency, or delinquency will have its “in existence” status clarified by other identifying phrases. The following are phrases that describe an active status:

- a. *In existence*—an active status. No certificate of termination or notice of tax forfeiture has been issued by the Secretary of State.
- b. *Delinquent*—an active status indicating that a professional association has failed to submit its annual statement by June 30, and has not yet been involuntarily dissolved/terminated.
- c. *Forfeited Rights*—an active status indicating that a nonprofit corporation or a limited partnership has failed to submit its Periodic report within 30 days after mailing by the Secretary of State, and has not yet been involuntarily terminated.
- d. *RA Notice Sent*—an active status indicating that the registered agent of the entity has resigned and a new registered agent has not been designated or that an allegation has been made that the entity is not maintaining a registered agent. Notice of the need to appoint a new registered agent has been mailed by the Secretary of State.
- e. *Report Due*—an active status indicating that a nonprofit corporation or a limited partnership has been requested to file a periodic report, or a professional association has been requested to file an annual statement. The due date for the report or annual statement has not passed.

B. Descriptions Relating to an Inactive Status

An official certification relating to the inactive status of an entity uses different terminology to describe an entity’s inactive status. The status description is dependent on the basis for the inactive status of the entity. The following are phrases used on official certifications issued by the Texas Secretary of State that describe an inactive entity status.

- a. *Cancelled*—an inactive status used under prior law¹ that was applicable to limited partnerships. This status indicates that the relevant Texas or foreign limited partnership filed a voluntary cancellation

¹ Prior law means the law applicable to the entity and in effect at the time the event or transaction occurred.

or was involuntarily cancelled by the secretary of state for failing to file its periodic report after notice of forfeiture of its right to do business in Texas.

- b. *Consolidated*—an inactive status used under prior law that was applicable to nonprofit corporations. The status describes a Texas nonprofit corporation that consolidated with one or more other nonprofit corporations. The equivalent transaction under the provisions of the current law would be a merger.
- c. *Conversion*—an inactive status indicating that the entity has converted into another type of entity or to another jurisdiction of domestication.
- d. *Expired*—an inactive status used to indicate expiration of a domestic corporation or limited liability company having a specified period of duration. Also used to indicate the expiration of the statutory term of duration for a domestic or foreign limited liability partnership registration (12 months), a name reservation (120 days), a name registration (12 months), an assumed name certificate (10 years), or a trademark registration (5² or 10 year term).
- e. *Forfeited Existence*—an inactive status indicating that the corporation or limited liability company failed to file its franchise tax return or to pay the tax due thereunder. Status is changed by secretary of state when certification of the delinquency is received from the comptroller of public accounts.
- f. *Involuntarily Dissolved*—an inactive status used to describe the status of a domestic corporation, professional association, or limited liability company that was administratively dissolved by action of the secretary of state under prior law. Now see involuntarily terminated.
- g. *Involuntarily Terminated*—an inactive status indicating that a Texas corporation, professional corporation, professional association, limited partnership, or limited liability company has been administratively terminated under the provisions of the Business Organizations Code for its failure to maintain a registered agent, file a report, or pay a fee.
- h. *Judicially Dissolved or Judicially Terminated*—an inactive status indicating that a Texas entity was dissolved or terminated by court order.
- i. *Law Repealed*—an inactive status indicating that the law applicable to the entity has been repealed. The entity was either required to file under another statute or the records regarding the entity were transferred to another agency that assumed responsibility for maintenance of those records and oversight over the entities transferred. For example, this status applies to trust companies that are now on file with Texas Department of Banking and to foreign bank agencies that were required to file as foreign financial institutions with the adoption of the Banking Code.
- j. *Merged*—an inactive status indicating that the domestic entity has terminated its existence by merging with and into another entity.
- k. *Terminated*—an inactive status indicating that a foreign entity has filed notice that its existence has terminated in its jurisdiction of formation.
- l. *Voluntarily Dissolved*—an inactive status used to describe the status of a domestic corporation, professional association, or limited liability company that filed Articles of Dissolution under prior law to voluntarily terminate its existence. Now see voluntarily terminated.
- m. *Voluntarily Terminated*—an inactive status indicating that a Texas entity has filed a certificate of termination to terminate its existence.
- n. *Withdrawn*—an inactive status indicating that a foreign entity has surrendered its authority to transact business in Texas by filing an application for withdrawal. Also the status used to describe a limited liability partnership that has surrendered its registration prior to expiration of its term by filing a notice of withdrawal.
- o. *Withdrawn on Conversion*—an inactive status provided to the registration held by a foreign corporation, professional association, professional corporation, limited liability company, or limited partnership that has filed a Certificate of Conversion converting the foreign entity to a Texas corporation, professional association, professional corporation, limited liability company, or limited partnership.

² Trademarks registered or renewed prior to September 1, 2012, were registered or renewed for a 10-year term. An application for registration or renewal of registration filed on and after September 1, 2012, was registered or renewed for a 5-year term.

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