Primer: Nuts and Bolts of LLCs, LLPs and Partnerships

The SOS Perspective

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Texas Business Organizations Code Structure
Types of Organizations and Non-Code Organizations
§ 1.002 (56) and (62)
Entity Names

Most frequent reason for rejection is availability of name.
Entity Name Determinations

SOS determines availability of the legal names of corporations, limited liability companies and limited partnerships.

• No SOS determination of availability for names of LLPs or assumed names filed under chapter 71 of Texas Business & Commerce Code (unless the assumed name is the name under which a foreign entity is required to transact business in Texas).
Administrative Rules on Availability of Entity Names

The standards that the SOS applies when determining the availability of an entity name are included in Title 1, Part 4, Chapter 79, Subchapter C of the Texas Administrative Code.

There is a link to the rules on the About the Corporations Section tier page on SOS website under Points of Interest.
Entity Name Availability

Three categories of names that are not available:

- Same
- Deceptively similar
- Similar requiring consent

Name availability standards vary from state to state. Texas does not use the distinguishable upon the record standard that may be used in other states. *Just because a name was available in Delaware doesn’t mean that the name will comply with § 5.053 BOC.*
Deceptively Similar
1 TAC §§ 79.37-79.39

Deceptively similar when difference is:
• words or abbreviations of organization
• use of different articles, prepositions or conjunctions
• spacing, periods, or other symbols
• singular, plural, or possessive
• spelled differently, but sound the same
• commonly known abbreviations or acronyms
Deceptively Similar Names Are Not Available with Consent

Steakley v. Braden
322 S.W.2d 363
(Tex. Civ. App.—Austin 1959, writ ref’d n.r.e.)

Consent does not apply to names that are deceptively similar. Legislature did not empower persons to authorize, by giving consent, the practice of unfair competition, confusion or fraud.
Names of Related Entities

Names of related entities can be close, but cannot be deceptively similar.

- You can create an LP under the name *Wassdorf-Flores Limited Partnership* and name the LLC general partner *Wassdorf-Flores GP, LLC*.

- You cannot name the LLC general partner *Wassdorf-Flores LLC* since the difference between the names is the organizational designations, a *deceptively similar* category.
Similar Requiring Consent
1 TAC §§ 79.40-79.43

Similar when difference is:
• geographical designation at end of name
• first two or more words are same or deceptively similar
• numerical expression that implies affiliation
• same words in inverted order
• internet locator at the beginning or end of name
• same root word
One Word in Common

Unless the conditions of deceptively similarity apply, one word in common will not bar a name.

- Ergon Energy, Inc. is not similar requiring a letter of consent from Ergon, Inc.

_Ergon, Inc. V. Dean, 649 S.W.2d 772 (Tex. App.—Austin 1983, no writ)_

Note that case also stands for the proposition that a violation of the administrative rules on availability is functional equivalent of a violation of the statute.
Forms of Consent

• Consent can be in any written format and signed by an officer or authorized agent of the consenting entity. Email consent is acceptable.

• Consent cannot be withdrawn. SOS does not enforce any private agreements or conditions that parties may have regarding use or regarding consent.
Forms of Consent

• Consent must be submitted with the document for which the consent has been obtained. Do not submit separately.

• SOS provides form 509 that may be used for consent.
How to Check Availability

- SOSDirect Name Availability Search
- Call (512) 463-5555
- Email corpinfo@sos.state.tx.us

This is a *preliminary* clearance.
What To Do After Checking Name Availability With SOS

Do not authorize client to execute contracts under proposed name or expend money for letterhead, signage, or other purchases utilizing the proposed name based on a preliminary clearance of the name.

*Final determination is made when the SOS files a document approving the use of the proposed name.* 1 TAC § 79.49
Name Reservations

Consider reserving a name if there is going to be a lapse between preliminary clearance and submission of a filing instrument to the SOS.

• Form 501
• $40 filing fee
• Reserved for a period of 120 days
• May be renewed
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
Other Places to Check

• Check for assumed names and state trademarks in SOS records.
• Check for assumed names in county records.
• Check USPTO.
• Search the internet, telephone directories, trade magazines.
SOS Determination May Not Be Persuasive in Subsequent Suit for Infringement

In determining availability, SOS only compares the proposed names with the legal names of corporations, LLCs and LPs as filed with the SOS.

No consideration given to location of operations, trade territories or channels, purposes, or prior or superior rights as evidenced by filings outside of the SOS records. 1 TAC § 79.48
Troublesome Words

• Words that imply an unauthorized purpose
  – Bank, Trust, Insurance
  – College, University
• Words that imply the entity should be created as a professional entity (e.g., medical, law, etc.)
• Words that imply the entity is created for veterans
  – Veteran, Foreign, War, Legion, Spanish
• Prohibited words
  – Olympic
  – Lotto or Lottery
Foreign Entity Issues
Foreign Entities Transacting Business in Texas

If you opt to create, for example, a Delaware LLC that will be transacting business in Texas, be sure the Delaware LLC promptly files its application for registration with the Texas SOS to avoid late filing fees.

The SOS may collect a late filing fee if the entity has transacted business in Texas for more than 90 days without registering. SOS may condition registration on payment of the late fee. § 9.054 BOC
Late Fee Calculation

Late filing fee = filing fee for registration for each year or part of a year that the entity transacted business without being registered.

SOS provides tool on its website for calculating late fee: www.sos.state.tx.us/corp/foreign_outofstate.shtml
Transaction of Business

• Corporation can be *doing business* in Texas and be subject to state taxation without being considered to be transacting business.

• Transacting business is not defined in BOC. Generally, if an entity has an office or employee in Texas, it should file an application for registration.

• While a Texas REIT would not file a certificate of formation with the SOS, a foreign REIT transacting business in Texas is required to register with the SOS. See § 9.001 BOC
Activities Not Considered to be the Transaction of Business

Section 9.251 provides a list of activities that are not considered to be the transaction of business:

• Interstate commerce
• Isolated transaction completed within 30 days
• Sales through independent contractor
• Owning, without more, real or personal property in Texas
• Maintaining a bank account
Filing Aids and Options
Expedited Handling

- Section 405.032 of the Government Code provides for the expedited filing or review of business filing instruments.

- The fee for expediting is $25 per instrument.

- Expedited service is not same day service. Documents are generally reviewed and filed by close of business the first business day after receipt.
Expedited Handling

- Notification of filing is a faxed copy of the certificate of filing; notification of rejection is a faxed copy of 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 minimal statutory requirements.

• Not intended to be a substitute for advice and services of an attorney.

• 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.
Forms Available on the SOS website in Word or PDF format

http://www.sos.state.tx.us/corp/forms_boc.shtml

• Certificates of formation
• Applications for registration
• Amendments, corrections, changes of registered office
• Name reservations, name registrations, assumed names
Report Forms

http://www.sos.state.tx.us/corp/forms_reports.shtml

- Nonprofit corporation periodic report—802
- Professional association annual statement (due June 30th)—803
- Limited partnership periodic report—804
More Forms

• Terminations, Withdrawals
• Mergers, Conversions
• Reinstatements
• LLP registrations
• Appointment of agents by financial institutions, unincorporated associations, foreign corporate fiduciary
• Mergers
• Conversions
Converting a Foreign Entity to a Texas Filing Entity

SOS does not provide a form for conversion of a foreign entity to a Texas filing entity. A summary of the requirements included in Form 647.

• Not all jurisdictions permit conversions. For a cross-jurisdiction conversion to be effective, the laws of both jurisdictions must permit the transaction and be followed.

• The registration of a foreign entity to transact business in Texas is automatically withdrawn on filing a conversion to convert the foreign entity to a domestic entity.
SOS has not promulgated forms for all possible filing scenarios

SOS has not promulgated forms for certificates of formation for:

- Close corporations
- Entities created under special statutes (cemeteries, industrial development corporations, health facility corporations, cultural educational corporations, agricultural cooperatives, etc.)
- Texas Series LLCs
Date of Filing

• If the SOS finds that a filing instrument delivered conforms to the provisions of BOC and the administrative rules, and all required fees have been paid, the SOS will file the instrument and assign a date of filing. § 4.002 BOC

• 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.
Date of Filing when a Document is Rejected

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

The date of filing may not be a date prior to the date on which the document is found to conform to law and the filing fee has been tendered.

Texas SOS does not “backdate” documents!
Delayed Effective Dates

File early and set forth delayed effective dates and times in the filing instrument. (SOS only shows time of filing in conjunction with delayed effective dates and times.)
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 fee.
Preclearance

• SOS will issue a letter indicating that the document has been precleared for filing.

• When document is submitted for filing, attach the preclearance letter; make sure the document has been executed and the correct filing fee has been submitted.
Forms of Payment

• SOS accepts cash, checks, most credit cards, LegalEase and allows for prefunded client accounts.

• Filing fees must be paid in advance. Fees for copies and certificates may be accrued and paid monthly.

• Don’t risk rejection for submission of a check in an insufficient amount. Use of a credit card, LegalEase or funded client account avoids the risk of rejection.
Certificate Validation

https://sosdirectws.sos.state.tx.us/pdfondemand/CertValidation.aspx

The online certificate validation process can be used to verify that a certificate of filing or a certificate of fact has, in fact, been issued by the Corporations Section of the Texas Secretary of State.

Uses the document number found at the bottom of each certificate.
Certificate Validation

https://sosdirectws.sos.state.tx.us/pdfondemand/CertValidation.aspx

Applies only to certificates of filing, certificates of fact, and information letters issued after January 1, 2006 in connection with business organization documents on file with the Corporations Section.

Certificates generated in connection with state trademark registrations or UCC filings cannot be verified through this service.
## Frequently Asked Questions

www.sos.state.tx.us/corp/generalfaqs.shtml

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<td>Terminations and Reinstatements</td>
<td>Foreign or Out-of-State Entities</td>
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<td>Nonprofit Organizations</td>
<td>Management and Ownership</td>
<td>Registered Agents</td>
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<td>Business Organizations Code</td>
<td>Filing &amp; Other General Questions</td>
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<td>Trademarks</td>
<td>Service of Process Information</td>
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</table>
Texas Secretary of State
Document Filing via SOSDirect

• Best Turnaround that the SOS provides. Usually between four and eight business hours.

• Available 24 by 7 for submissions and retrieving information.

• No expedite fees assessed.
Document Filing via SOSDirect

- File dates are based on submission date because that is when the documents are received by the SOSDirect system.

- Certificates of filing, file-stamped copy of document, and packing slip returned by email. Rejection notices too!
Documents that can be submitted via SOSDirect

- Name reservations (no renewals)
- Name registrations (no renewals)
- Certificates of formation (not for entities created under special statutes)
- LLP registrations (no renewals)
- Applications for foreign registration
- Changes of registered office/agent
- Assumed name certificates (does not include county filing)
- Terminations and Withdrawals
Documents that can be submitted via SOSDirect with limitations

• Certificates of amendments (*online filings limited to entity name changes*)

• Reinstatements *after tax forfeitures*

• Annual statements and periodic reports for limited partnerships and nonprofit corporations *so long as the filing is timely*
SOSDirect Helpful Hints

• SOS does not re-key the data you submit. The database and any certificates issued will reflect the entity name, and other information, exactly as you entered the data.

• You are establishing and entering your account information when you set up an SOSDirect account. If you want the name of your firm to be in sentence case on acknowledgment and rejection letters, don’t enter the name in lower case.
SOSDirect Helpful Hints

• Email from SOSDirect system is sent via an automated process. If you use a Spam filtering service make sure the address sosdirect@sos.state.tx.us is allowed through without being filtered. This will ensure documents delivered via email will arrive without delay and without the need for human intervention.

• Open emails and links to zipped files as soon as practical.

Document submitted may have been rejected!
SOSDirect Payment Options

$ Charges for Inquiries/Orders may accrue to the Client Account and be paid from a monthly statement. Charges for Web Filings require payment at time of submission.

$ Methods of payment include client account, credit card [American Express, Discover Card, MasterCard, or Visa] or LegalEase.
SOSDirect Payment Options

$ Use Credit Card or LegalEase for payment method unless client account has been funded 24 hours in advance.

$ Credit card company may decline payment if name and address entered on payment screen do not match card statement.
Attachments in SOSDirect

• SOSDirect allows for attachment of documents in the following formats: PDF, TIF and TXT.

• Attachment feature generally used for consent of registered agent, consent to use of an entity name, and for tax certificates.

• Note: On request, Comptroller of Public Accounts will provide a tax certificate or tax clearance letter in the appropriate file format for attachment purposes.
Text Box in SOSDirect

Text Boxes allow user to input optional provisions or to cut and paste these provisions from another document.
SOSDirect Statistics

- Currently, over 43% of all filing instruments are submitted via SOSDirect.
- The percentage of certificates of formation submitted through SOSDirect is 60% and rising.
- Percentage of orders (certificates of fact, certified copies and plain copies) placed over SOSDirect approaching 90%.
Searching on SOSDirect

Users can search the same database and conduct the same searches as an SOS employee:

• Name availability
• Find by name of entity
• Find by name of person associated with the entity
• Find global

*Note: $1.00 fee per search on SOSDirect.*
Searching on SOSDirect

Users can search the same database and conduct the same searches as an SOS employee:

• Find by assumed name
• Find by number (file number, document number, tid, fein)
• Find by registered agent
• Find entities that have named you as registered agent in the last 60 days

*Note: $1.00 fee per search on SOSDirect.*
Use client reference to keep track of work performed for client.
This search was performed on with the following search parameter:
**ENTITY NAME**: Dell Computer

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<tr>
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<th>Filing Number</th>
<th>Name</th>
<th>Entity Type</th>
<th>Entity Status</th>
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Records 1 to 10 of 30 scroll [Next >>] OR proceed to page [ ] of 3 pages [GO]

Instructions:
- To view additional information pertaining to a particular filing select the number associated with the name.
- To place an order for additional information about a filing select the radial button listed under 'Mark' that is associated with the entity and press the 'Order' button.
The “entity detail” screen provides a brief summary of information relating to the entity and defaults to display the current registered agent/office information.
**Texas Secretary of State**

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<td>Tax ID:</td>
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<tr>
<td>Name:</td>
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<td>Address:</td>
<td>1 DELL WAY ROUND ROCK, TX 78682-7000 USA</td>
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<td>Jurisdiction:</td>
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**Entity Type:** Foreign For-Profit Corporation  
**Entity Status:** In existence

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Image icon indicates you can print a copy of document from your PC.
To order certified copies or certificates of fact, press the order button at the bottom of the filing history display.
Instructions:

- Select an order type. If you selected a certificate of fact, you must also select a fact type.
- Input the filing number of the entity for which you are ordering copies or certificates or the registration number for the trademark. Enter the filing number without spaces or hyphens. Some filing numbers on the legacy computer system consisted of a two digit type code. Include those digits as the last two numbers of the filing number.
- If you do not know the filing or registration number, click the 'Find' button.
- When you have identified the applicable entity or trademark and selected the order type, click on 'Add Order Item.' This will add the item to the grid. If an order item has been incorrectly added, you may click on 'Delete' to remove it.
- The statutory fees for order types are as follows:
  - Certificates of Fact $15.00 per certificate
  - Information Letters $5.00 per letter
  - Certified Copies $15.00 for the certificate and $1.00 for each page in the copy
  - Plain copies Copies of less than 50 pages, $0.10 per page
- You will be notified by e-mail when the order is processed and ready for retrieval from your briefcase. Certificates will have a digitized signature of the Secretary of State and seal of the State of Texas.
Select “order type” from the drop down list. To get a “certificate of existence,” first select “Certificate of Fact.”
After selecting “Certificate of Fact,” select a “fact type.” For a certificate of existence, select “status.”
Click the “Add Order Item” button to add the order item selected. Click the “Submit Order” button, to transmit your order.
SOSDirect 2 Coming Soon!
SOSDirect 2 has a new look and some enhanced features.
New look for menu of business services.
Same search options - just different look to menu. Top tab and left navigation provided.
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<th>Entity Status</th>
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<td>DELL COMPUTER USA CORPORATION</td>
<td>Foreign For-Profit Corporation</td>
<td>Withdrawn</td>
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<td>DELL COMPUTER CATALOG SALES CORPORATION</td>
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<td>Computer Modelling Group, Inc.</td>
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<td>9163206</td>
<td>DEALER COMPUTER SERVICES, INC.</td>
<td>Foreign For-Profit Corporation</td>
<td>In existence</td>
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<td>IDEAL COMPUTER SERVICES, INC.</td>
<td>Domestic For-Profit Corporation</td>
<td>Forfeited existence</td>
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<td>IDEAL COMPUTERS, INC.</td>
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<td>Forfeited existence</td>
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Entity detail display enhanced to include registered agent info. Initial tab displayed is filing history.
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<th>Filing Type</th>
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<th>Effective Date</th>
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<tr>
<td>3105275</td>
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<td>10/19/2003</td>
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<td>154961410002</td>
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<td>12/20/2006</td>
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<td>154061680002</td>
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<td>15406405002</td>
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</table>
Same order types - just different order menu.
When order type selected is “Certificate of Fact,” new tab appears for “Fact Type.”
Fact type selection for certificates of fact clarified.
Document selection includes SOS form numbers.
New Save Draft feature allows user to save a document during entry process before final submission.
Your draft is available from briefcase for 30 days.
• Retrieve draft documents from briefcase to continue editing/creating the document before your formal submission to SOS.

• Retrieve rejected documents for correction and resubmission.
Need Help?
Contact SOS by Email

Name availability & general entity information:
corpinfo@sos.state.tx.us

Request copies or certificates of fact:
corpcert@sos.state.tx.us

Legal questions relating to filing issues:
corphelp@sos.state.tx.us

SOSDirect assistance & issues:
sosdirect@sos.state.tx.us
Need Help?
Contact SOS by Email

Contact individual at SOS:
first initial last name@sos.state.tx.us
lwassdorf@sos.state.tx.us
Need Help?
Call (512) 463-5586

- Meridith Debus 463-5747
- Donna Murphy 475-0281
- Briana Godbey 463-5590
- Mike Powell 463-9856
- Carmen Flores 463-5588
- Lorna Wassdorf 463-5591
Mergers & Conversions
Merger Defined

Section 1.002(55)(A) BOC

(A) The division of a domestic entity into:
   (i) Two or more new domestic entities or other organizations
SOS Form 621
Divisive Merger—definition A (i)

Texas Entity A
- Existing Texas Entity

(Texas Entity A) merger

New Entity B
- domestic or foreign entity or non-Code org.

New Entity C
- domestic or foreign entity or non-Code org.

(existing)
Merger Defined

Section 1.002(55)(A) BOC

(A) The division of a domestic entity into:

(ii) A surviving domestic entity and one or more new domestic or foreign entities or non-code organizations.
SOS Form 621

Divisive Merger—definition A (ii)

Texas Entity A
Existing Texas entity

merger

Texas Entity A
Same entity survives

New Entity B
domestic or foreign entity or non-Code org.
Divisive Merger

1. In a divisive merger there is always one existing Texas entity at the front end of the merger.

2. There are always two or more entities at the end of the merger.
Q: Can a foreign entity use the divisive merger provisions to create a Texas entity into which it will merge?

A: No. By definition, a divisive merger cannot be used by a foreign entity to create a Texas entity into which to merge.
Q: Can a Texas general partnership use the divisive merger provisions?

A: Yes. A general partnership is not a filing entity; it is a domestic entity that may engage in a divisive merger. In this case, a certificate of merger would not be filed with SOS.
Merger Defined

Section 1.002(55)(B) BOC

(B) The combination of one or more domestic entities with one or more domestic entities or non-code organizations resulting in:

(i) One or more surviving domestic entities or non-code organizations;

(ii) The creation of one or more new domestic entities or non-code organizations; or

(iii) One or more surviving domestic entities or non-code organizations and one or more new domestic or foreign entities or non-code organizations.
SOS Merger Form 622
Combination Merger—Definition B (i)

Constituent Entity A
Existing Texas entity

Constituent Entity B
Existing domestic or foreign entity or non-Code org.
(non-surviving)

Survivor

(Note: Surviving Texas entity can amend, but not amend and restate its certificate of formation.)
SOS Merger Form 622
Combination Merger—Definition B(ii)
“consolidation”

Constituent Entity A
Existing Texas entity
(non-surviving)

Constituent Entity B
Existing domestic or foreign entity or non-Code org.
(non-surviving)

merger

New Entity C
Domestic or foreign entity or non-Code org.
SOS Merger Form 622
Combination Merger—Definition B (iii)

Constituent Entity A
Existing Texas entity
(non-surviving)

Constituent Entity B
Existing domestic or foreign entity or non-Code org.

New Entity C
Domestic or foreign entity or non-Code org.

Constituent Entity B
Existing domestic or foreign entity or non-Code org.
(surviving)

merger
SOS Merger Form 622
Possible Combination Merger—Definition B (iii)
Short-form Mergers
BOC § 10.006

• Parent must own 90%+ of the outstanding ownership interests of each class & series of each one or more subs to merge with one or more subs.

• One party to the merger must be a Texas entity.

• None of the subs is a Texas partnership!

• Resulting organization(s) are the parent, one or more existing subs, or one or more new organizations.
Short-form Mergers

• Approval of Texas subs not required. § 10.006

• If parent is the survivor, only approval required is a resolution of the governing authority of parent.

• When parent not the survivor, a plan of merger must be adopted by action of owners/members of parent.

• No amendments to Texas parent’s formation document.

• Merger can include amendments to a domestic sub’s formation document.
Short Form Merger—sub into sub

Parent Entity A
Foreign or Texas entity
Holds 90% or more
Ownership interests

Merger adopted by
governing authority of
parent (SOS Form 623).

Subsidiary Entity B
Existing domestic
or foreign entity
or non-Code org.

Subsidiary Entity C
Existing domestic
or foreign entity
or non-Code org.

(Surviving Texas sub. Merger can
include amendments to formation
document.)

(non-surviving)
Short Form Merger—subs into parent (upstream merger)

Merger adopted by governing authority of parent (SOS Form 623).

Parent Entity A
Foreign or Texas entity Holds 90% or more Ownership interests

Subsidiary Entity B
Existing domestic or foreign entity or non-Code org.
(non-surviving)

Subsidiary Entity C
Existing domestic or foreign entity or non-Code org.
(non-surviving)
“Short Form” Merger—parent into sub (downstream merger)

Owners/members of parent must approve plan of merger—
cannot use Form 623.

Parent Entity A

Foreign or Texas entity
Holds 90% or more Ownership interests

Subsidiary Entity B
Existing domestic or foreign entity or non-Code org.
(surviving)

Subsidiary Entity C
Existing domestic or foreign entity or non-Code org.
(non-surviving)

Texas Secretary of State
Short-form Mergers

Most common rejection reasons:

– Merger fails to include copy of resolution of parent organization.

– Date of adoption of resolution not included in merger approval.
Mergers & Conversions

Need statutory authority to merge or convert
Need a **written** plan and agreement

• Requirements for a plan of merger for domestic entities are found in §§ 10.001 through 10.004.

• Requirements for plan of conversion for domestic entities are found in §§ 10.103 and 10.104.

Need approval of governing persons and/or the owners or members of each domestic entity that is a party to the plan of merger/conversion.
Mergers & Conversions

Special provisions relating to Texas partnership mergers/conversions

• Partnership agreement must contain provisions that authorize a merger or conversion of the type provided for in the plan. BOC §§ 10.009(f) & 10.107(b)

• Partners to approve merger/conversion in the manner set forth in the partnership agreement. BOC §§ 10.009(g) & 10.107(c)
Mergers & Conversions

Statutory restrictions may be placed on authority to merge or convert.

- Unincorporated nonprofit associations do not have authority to merge or convert. BOC § 252.017

- Nonprofit corporation cannot merge into another entity if corporation would, because of merger, lose or impair its charitable status. BOC § 10.010 (a)

- If other parties to merger are domestic or foreign for-profit entities or non-code organizations, nonprofit corporation must be one of survivors to merger. BOC § 10.010 (b)
Section 10.108 of the BOC provides that a nonprofit corporation may not convert into a for-profit entity. SOS will accept a certificate of conversion that converts a Texas nonprofit corporation to a:

- foreign nonprofit corporation;
- nonprofit LLC;
- cooperative association; or
- special nonprofit corporation formed under a code other than BOC.

A for-profit entity may convert to a nonprofit entity.
Conversion Pitfalls

• A domestic entity created by a plan of conversion is formed by filing the Certificate of Conversion. Its existence is effective on the effectiveness of the conversion.

• Remember to include a statement in the certificate of formation that the converted entity was formed under a plan of conversion and the name, address, date of formation, prior form of organization, and jurisdiction of formation of the converting entity.
Conversion Pitfalls

• Remember to include the filing fee for the certificate of conversion as well as the filing fee for the certificate of formation for the converted domestic filing entity.

• Don’t file the Certificate of Formation of the converted entity before the conversion!
Thank You

Come visit us on the web at:

www.sos.state.tx.us