Primer: Nuts and Bolts of LLCs, LLPs and Partnerships

The SOS Perspective

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Texas Business Organizations Code
Structure and Entity Types
Entity Names
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, 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 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 same
► 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 acceptable.
- Consent cannot be withdrawn. SOS does not enforce any private agreements or conditions that parties may have regarding consent.
- Consent should 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 *preliminary* clearance.
What to do after checking name availability with the 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
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 a right 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 of availability may not be persuasive in a subsequent suit for name 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 that 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 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 the 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 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
Restated Certificates of Formation
Names & Addresses of Governing Authority

- Restated certificate is required to restate the text of the certificate of formation, as amended, corrected, or restated, in its entirety.
  - While BOC permits entity to omit organizer information, the number, names and addresses of an entity’s governing authority are required.
  - Sections 3.060(a), 3.061(a), and 3.0611 of the BOC permit you to provide an update to reflect current governing authority.
  - Update is not a further amendment.
Failure to Identify Amendments

Restated Certificates Making Further Amendments

- Section 3.059(d)(2) requires a restated certificate to “identify by reference or description each added, altered, or deleted provision.”
- Cannot simply state: “The certificate of formation is amended and restated in its entirety.”
- Do not need to fully set forth each amended, altered, or deleted provision. Identification may be brief and concise. For example:

  “The title is amended and restated. Articles 1 - 5 are amended and restated in their entirety; article 6 is deleted; and articles 7 and 8 are renumbered accordingly.”
Entities Created by Merger or Conversion

Additional Statements Required

The restated certificate of formation of an entity created pursuant to a plan of merger or conversion also must include the additional statements that were required to be contained in the certificate of formation under § 3.005(a)(7) of the BOC.
Mergers & Conversions
Section 1.002(55) BOC

(A) The division of a domestic entity into:

(i) Two or more new domestic entities or other organizations; or

(ii) A surviving domestic entity and one or more new domestic or foreign entities or non-code organizations.
Divisive Merger—definition A (i)

Texas Entity A

Existing Texas Entity

(non-surviving)

merger

New Entity B
domestic or foreign
or “other entity”

New Entity C
domestic or foreign
or “other entity”
Merger Defined

Section 1.002(55) BOC

(A) The division of a domestic entity into:
   (i) Two or more new domestic entities or other organizations; or
   (ii) A surviving domestic entity and one or more new domestic or foreign entities or non-code organizations.
Divisive Merger—definition A (ii)
**Divisive Merger**

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

   ![Diagram](image)

   - **Existing Tx entity**
   - **Surviving or New entity**
   - **New entity**

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. Although a general partnership is not a filing entity, it is a domestic entity that may engage in a divisive merger. In the scenario shown, a certificate of merger *would not* be filed with SOS.
Merger Defined

Section 1.002(55) 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.
existing Texas entity

Constituent Entity A

Existing domestic or foreign entity or “other entity”

Constituent Entity B

Existing Texas entity

merger

Survivor

Constituent Entity A

(Note: Surviving Texas entity can amend, but not *amend and restate* its certificate of formation.)

Combination Merger—Definition B (i)
Combination Merger—Definition B (ii) a.k.a. a “consolidation”
SOS Merger Form 622

**Constituent Entity A**
- **Existing** Texas entity
- (non-surviving)

**Constituent Entity B**
- **Existing domestic or foreign entity** or “other entity”

**New Entity C**
- **Domestic or foreign entity** or “other entity”

**Combination Merger—Definition B (iii)**

**Constituent Entity B**
- **Existing domestic or foreign entity** or “other entity”

**Combination Merger—Definition B (iii)**
Possible Combination Merger—Definition B (iii)

Constituent Entity A (surviving)
- Existing Texas entity

Constituent Entity B (surviving)
- Domestic or foreign entity or “other entity”

New Entity C
- Domestic or foreign entity or “other entity”
Short-form Mergers

- BOC § 10.006
  - Parent organization must own at least 90% of the outstanding ownership interests of each class and series of each one or more subsidiary organizations to merge with one or more subsidiary organizations.
  - One party to the merger must be a Texas entity.
  - Each other party is an organization organized under a jurisdiction that permits a merger of this type.
  - None of the subs is a Texas partnership (parent organization may be partnership).
  - Resulting organization(s) are the parent, one or more existing subs, or one or more new organizations.
Short-form Mergers

- **BOC § 10.006**
  - Texas subsidiaries not required to approve a merger under § 10.006.
  - When 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 certificate of formation of Texas parent organization.
  - Merger can include amendments to a domestic sub’s formation document.
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 “other entity”

100%

90%

Subsidiary Entity C
Existing domestic or foreign entity or “other entity”

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

(Non-surviving)

Short Form Merger—sub into sub
Merger adopted by governing authority of parent (SOS Form 623).

Short Form Merger—subs into parent (upstream merger)
Owners/members of parent must approve plan of merger—cannot use Form 623.

“Short Form” Merger—parent into sub (downstream merger)
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.
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 statutory authority to merge or convert. BOC § 252.017
  - Nonprofit corporation cannot merge into another entity if corporation would, because of the 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)
Nonprofit Conversions

♦ 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

- 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!*

- 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.
Filing Aids and Options
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.

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
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
Merger Forms

- Divisional merger: Form 621
- Combination merger: Form 622
- Parent-sub merger (parent survives): Form 623
- Nonprofit merger: Form 624

While forms can be used when a foreign entity is involved in the merger, the Texas drafted merger may not comply with the laws that govern the foreign entity.

*SOS does not provide forms for plans of merger or conversion.*
Conversion Forms for Corporations (for-profit and professional)

Corporation converting to

- General partnership: Form 631
- LLC: Form 632
- LP: Form 633
- REIT: Form 634
Conversion Forms for LLCs

Limited Liability Company converting to

- General partnership: Form 635
- Corporation: Form 636
- Limited Partnership: Form 637
- REIT: Form 638
Conversion Forms for LPs

Limited Partnership converting to

- General Partnership: Form 641
- Limited Liability Company: Form 642
- Corporation: Form 643
- REIT: Form 644
Other Conversion Forms

- Conversion of a Professional Association to a Professional Limited Liability Company (Form 645)
- Conversion of a Texas General Partnership to a Texas Filing Entity (Form 646)
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.
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.
- File dates are based submission date because that is when the documents are received by the SOSDirect system.
- No expedite fees assessed.
- 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 and name registrations
✓ 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.

- Email from the 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 your 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.

$ 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 and Text Boxes 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 format for attachment purposes.
- Text Boxes allow user to input optional provisions or to cut and paste these provisions from another document.
SOSDirect Statistics

- Currently, over 40% of all filing instruments are submitted via SOSDirect.
- The percentage of certificates of formation submitted through SOSDirect is 58% 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, supplemental, 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.

### CLIENT REFERENCE (optional): [NONE]

| Client Reference: | Update Client Reference |

### INQUIRIES AND ORDERS

- **Name Availability Search**
- **Find - Entity**
- **Find - Supplemental**
- **Find - Global**
- **Find - Assumed Name**
- **Find - People**
- **Find - Registered Agent**
- **Filing Number Search**
- **FEIN Search**
- **TID Search**
- **Document Number Search**
- **Order - Certificates and Copies**
- **Bulk Order - Data**
- **Registered Agent activity past 60 days** (NEW)

### WEB FILINGS

**DO NOT USE 'BACK' BUTTON**

Use of the 'BACK' button during the "WEB FILINGS" process will result in loss of data. Please press the 'Cancel Filing' button and start again.

1. **Reservation * Formation * Registration Documents**
   - First select the type of entity for which you wish to submit a filing, and then click 'File Document'
   - Application for Name Reservation
   - File Document

2. **File assumed name certificates, changes to registered office/agent, dissolutions, reinstatements, cancellations, withdrawals and annual statements as change documents.**

3. **Change Documents**
   - Enter filing number and click 'File Document' or click 'Find Entity'
   - Find Entity
   - File Document
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<th>Filing Number</th>
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</table>

Records 1 to 10 of 30 scroll Next >> OR proceed to page ______ of 3 pages

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.
### Business Organizations Inquiry - View Entity

**Filing Number:** 7444706  
**Entity Type:** Foreign For-Profit Corporation  
**Entity Status:** In existence

**Original Date of Filing:**  
**Formation Date:** N/A  
**Tax ID:** 17424878340  
**Fictitious Name:** Dell Computer Inc.  
**Jurisdiction:** DE, USA  
**Foreign Formation Date:** N/A

### Registered Agent

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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.
Date of Filing

- If the SOS finds that a filing instrument delivered conforms to the provisions of this code 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 does not include the time 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.*
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 or Conditions

General rule: Filing instrument takes effect on filing.

Section 4.052 BOC allows an instrument to take effect *after* the time the filing instrument would otherwise take effect:

- at a specified date and time; or
- on the occurrence of a future event or fact.
Conditions for Delayed Effectiveness (Specific Date and Time)

- Filing instrument must clearly and expressly state the specific date and time.
- Statement regarding date and time cannot be in a cover letter.
- Date may not be later than 90 days after the instrument is signed.
- Time cannot be 12:00 a.m. or 12:00 p.m.
- Time will be shown in SOS records as central time.
Conditions for Delayed Effectiveness
(Future Event or Fact)

- Filing instrument must clearly and expressly state:
  1. the manner in which the event or fact will cause the instrument to take effect; and
  2. the date of the 90th day after the date the instrument is signed.

Entity must file a statement of future event or fact (Form 805) when the conditions have been satisfied or waived.
Section 4.055 BOC requires the statement to be filed not later than the 90th date after the instrument is filed. Statement must confirm:

- that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived;
- state the date and time on which the condition was satisfied or waived.

What happens if the statement is not filed?
If not filed, the filing instrument is not effective.
Parties must either:

- File a subsequent filing instrument to make the action or transaction evidenced by the original filing effective; or
- File a statement of abandonment under § 4.057.
Delayed Effectiveness Not Permitted

§ 4.058 BOC

- Name reservations
- Name registrations
- Statement of event or fact
- Abandonment prior to effectiveness
(a) Upon the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the surviving entity or entities, if applicable. In addition, at the time of such filing:

(1) the status of any domestic entity on file with the secretary of state that is converting, merging out of existence, or terminating, will be changed from active to inactive, and the status of any foreign entity withdrawing or terminating its registration will be changed from active to inactive;

(2) the status of any domestic entity to be created and filed with the secretary of state by the terms of a plan of merger, plan of conversion, or certificate of formation, or the status of any foreign entity registered to transact business in Texas shall appear in the active records of the secretary of state; and

(3) any filings making amendments to a certificate of formation or application for registration will be recorded in the records of the secretary of state.
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.

- 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 filing fee is paid.
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.

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

For more information, visit [www.sos.state.tx.us/corp/generalfaqs.shtml](http://www.sos.state.tx.us/corp/generalfaqs.shtml).

<table>
<thead>
<tr>
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<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>
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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 475-2081
- Briana Godbey 463-5590
- Mike Powell 463-9856
- Carmen Flores 463-5588
- Lorna Wassdorf 463-5591