

Update from the Office of the Secretary of State

28th Annual LLCs, LPs and Partnerships
July 18-19, 2019
Austin, Texas

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New Texas Entity Filings

	<u>2017</u>	<u>2018</u>
For-Profit Corporations	21,938	24,135
Nonprofit Corporations	12,339	12,830
Professional Corporations	719	686
Professional Associations	432	408
Limited Liability Companies	166,589	192,284
Limited Partnerships	4,516	4,599
Limited Liability Partnerships (initial registrations)	525	417

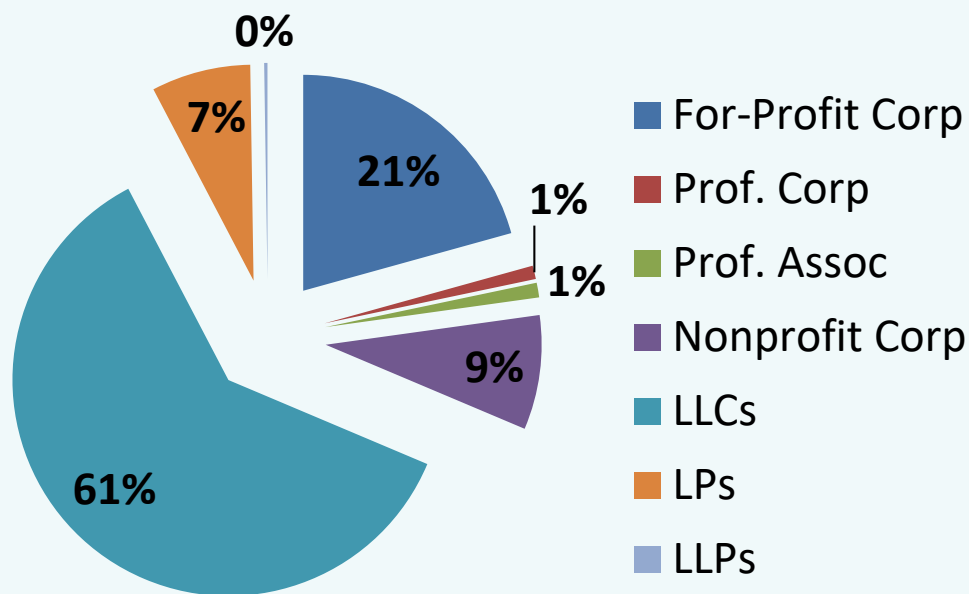


SOS Census

June 1, 2019

Active Domestic Entities

For-Profit Corp	360,067
Prof. Corp	17,483
Prof. Assoc	19,071
Nonprofit Corp	149,001
LLCs	1,060,564
LPs	129,293
LLPs	4,263



Business Entity Names

One Year After Change...



Entity Name Availability Standard

BOC §§ 5.053, 5.102 & 5.153

Distinguishable In the Records

- Comparison shows enough differences to make the name available.

SAME

- Comparison shows no differences or the only differences do not alter the names sufficiently to make them distinguishable. Unavailable even with consent.

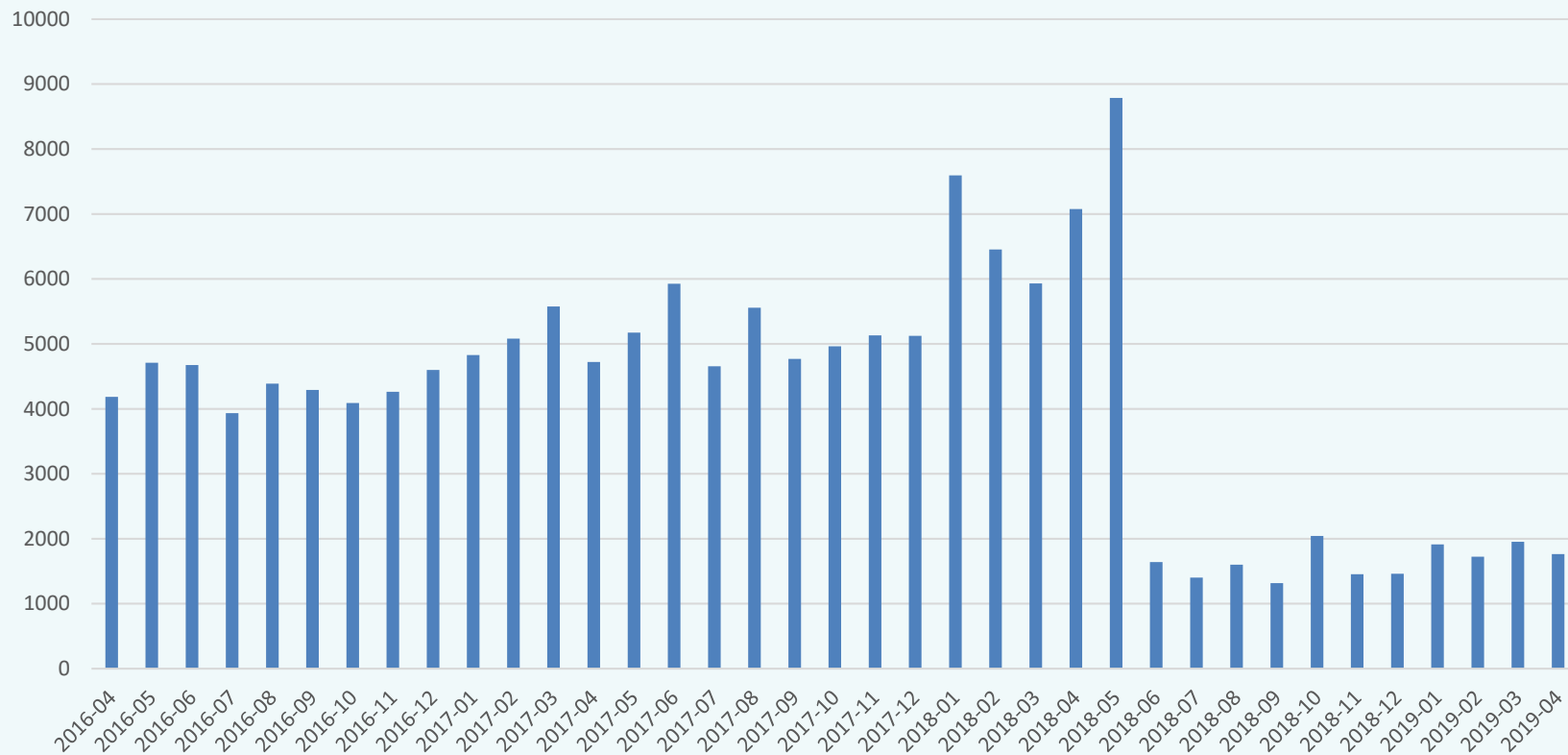
Available with Consent

- Comparison reveals certain similarities and therefore is only available with consent.



Has it helped?

Name Availability Rejections by Month



Common Filing Errors

and a checklist of how to avoid them



Certificates of Correction

§§4.101-4.105

An entity may correct a filed instrument that:

- Is an inaccurate record of the action referred to in the instrument,
- Contains an inaccurate or erroneous statement; or
- Was defectively executed.



Scenario: Who can sign the Certificate of Correction?

- A. The client, as managing member of the LLC
- B. You, as the attorney for the LLC
- C. The organizer of the entity
- D. Any of the above

Answer: Answer depends on the document to be corrected. If the document to be corrected is a Certificate of Formation, the organizer of the entity must sign the correction. A Certificate of Correction for a Certificate of Amendment filed on behalf of an LLC may be signed by a managerial official of the LLC.



Certificates of Correction

§§4.101-4.105

Sometimes a Certificate of Correction may be subject to greater scrutiny and may be initially rejected.



Corrections

Checklist

- ✓ Make sure signed by authorized person; organizer if correcting certificate of formation.
- ✓ If it has been more than a year, or correction makes substantial changes, explain in cover letter or call SOS legal staff.



Restated Certificates of Formation

Checklist

- ✓ Organizer can be restated or omitted, but not changed
- ✓ Governing persons can be restated or updated but not omitted
- ✓ If entity formed pursuant to plan of merger or conversion; include §3.005(a)(7) language
- ✓ Include document making necessary approval statements (Forms 414, 415) and attach the actual restated certificate of formation



Conversions

Checklist

- ✓ Certificate of formation and certificate of conversion submitted simultaneously
- ✓ Language required under §3.005(a)(7) included in certificate of formation
- ✓ When not including plan of conversion, include the statements required by §10.154(b)(1), including addresses for both the converting and converted entities
- ✓ Include tax clearance letter or alternate statement



Mergers

Checklist

- ✓ Clearly identify if the certificate of formation of a surviving party will be amended or restated (3A for no amendments on SOS merger form)
- ✓ Include any exhibits referenced in the plan/certificate of merger
- ✓ Make sure parties listed in plan are included in the certificate of merger
- ✓ Make sure all parties sign the document



Mergers & Conversions

Other Common Errors

- Execution issues
- Identifying merging/converted domestic entity as an LLP without including the organizational form of the underlying partnership
- Delayed effectiveness – must be consistent



More Delayed Effectiveness Issues

- Delayed effective date may not be later than 90 days from the date of signing.
- Delayed effective times may not be stated as 12:00 am, 12:00 pm, midnight or noon.
- All delayed effective dates and times are recorded as the date and time in the time zone used by filing office—***Central Time***.



New Delayed Effectiveness Provisions

- SB 1859
- Options for delayed effectiveness
 - Delayed effective date
 - Delayed effective date and time
 - Delayed effective condition
 - Delayed until specific date following condition
 - Delayed until specific date and time following condition
 - Delayed until passage of specified period of time following condition



Post-Transaction Filings May Be Required

- ✓ Amendment to Foreign Registration
(Forms 406 [LLC or Corp], 407 [LLP] or 412 [LP])
- ✓ Termination of Foreign Registration
(Form 612)
- ✓ **Transfer of Foreign Registration**
(Form 422 [LLC, Corp or LP])
- ✓ New Assumed Name Certificate
(Form 503)

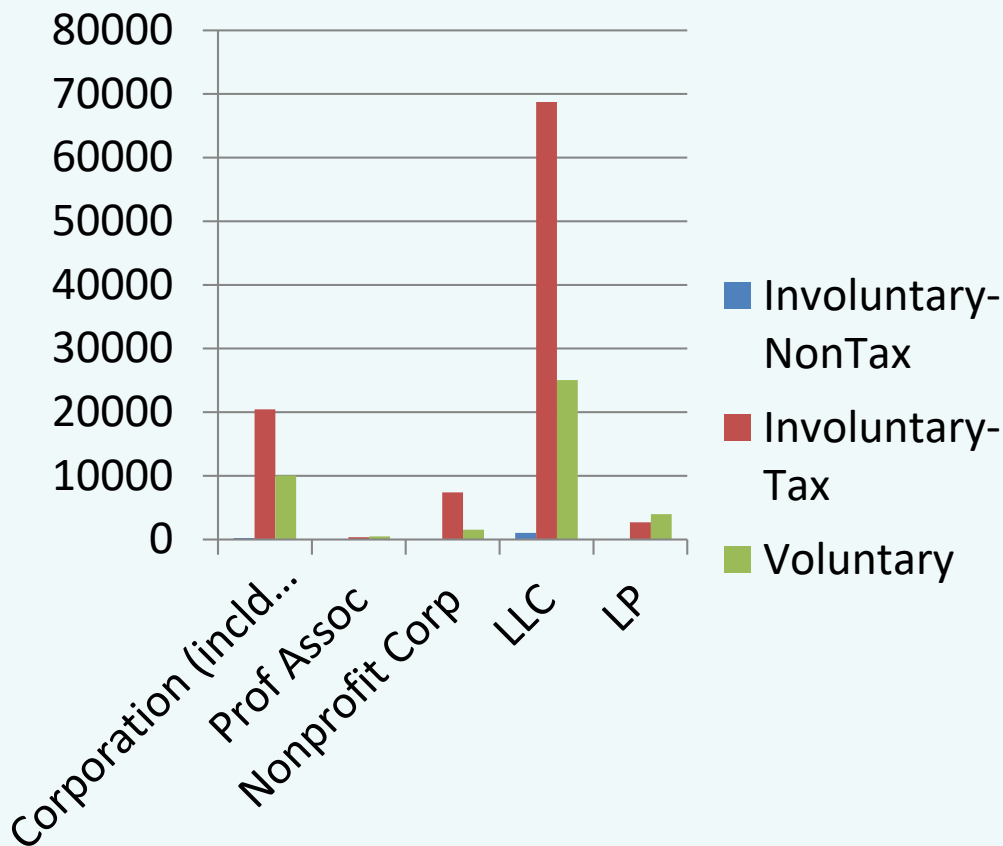


LPs Registered as LLPs

- When a domestic LP files an instrument that affects the LP's existence (termination, merger, or conversion), the LP's LLP registration is not updated to reflect the filing of the instrument.
- Consider filing a withdrawal of the registration when the existence of the underlying partnership ceases due to a termination, merger or conversion.



Terminated Entities 2018



- In 2018, the SOS forfeited the existence of 99,626 Texas filing entities under the Tax Code.
- In January 2019, the SOS forfeited the existence of 92,118 Texas filing entities under the Tax Code.



Hurdles to Reinstatement

- Entity Name Issues
- Registered Agent Issues
- Entity has Expired



LLP Annual Reports

- In January/February of 2019, SOS mailed 3,483 annual notices to Texas LLPs with an active registration status as of December 31, 2018.
- In March of 2019, 661 LLPs in “Delinquent” status received a **Notice of Impending Termination**.



LLP Annual Reports

- In June 2019, approximately 77% of the LLPs who were sent a Notice of Impending Termination were automatically terminated for failing to file the 2018 annual report.
- Termination of LLP registration status does not affect the existence of the underlying partnership and is not an event requiring the winding up of the partnership under BOC.



Reinstatement of LLP Status

- Complete SOS Form 816—Filing Fee \$75
- Tax Clearance Letter from Comptroller of Public Accounts
- Each Annual Report not filed, including the annual report and filing fee due that year.
- Delinquent report fee--\$200 per partner as of May 31 of delinquent report year
- Application for reinstatement, all annual reports, together with all filing fees, must be submitted concurrently.





- Businesses can help combat human trafficking by:
- Adopting a zero tolerance policy;
 - Training staff to recognize and address signs of human trafficking;
 - Participating in a public awareness or education campaign; and
 - Joining TBAAT as either a Partner or Associate.



Doing Business with SOS

Visit us on the Web at www.sos.texas.gov

SOS Forms available at

www.sos.texas.gov/corp/forms_option.shtml

Online Filing, Search & Orders available through



Track the progress of your document submission with
Business Filing Tracker at

<https://webservices.sos.state.tx.us/filing-status/status.aspx>



SOS Contact Emails

Name availability & general entity information:

corpinfo@sos.texas.gov

Request copies or certificates of fact:

corpcert@sos.texas.gov

Legal questions relating to filing issues:

corphelp@sos.texas.gov

SOSDirect assistance & issues:

sosdirect@sos.texas.gov

