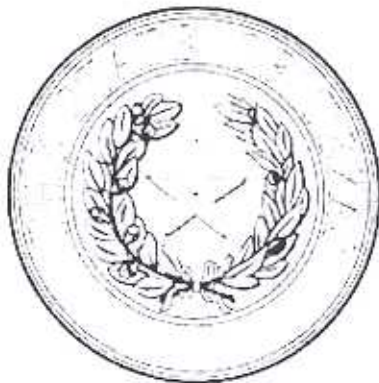


How To Register Your Business Name in Texas



Texas Economic Department of Economic Development



Marketing the Lone Star State™

Texas Economic Development

4 Steps to Starting a Business



STEP 1: BUSINESS STRUCTURE AND NAME

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The first step in starting a business is to determine the basic legal structure of the business, and to properly record the business name. This step is important when starting a business, since financial implications vary depending on which legal structure is selected. These range from corporation responsibilities for annual franchise tax fees to personal liability for business dealings as a sole proprietorship. The business name selected is the identifying and marketing component of the business. It should be given much thought and consideration. A professional tax consultant, accountant, and/or attorney should always be consulted before determining legal structure and business name.

LEGAL STRUCTURE

There are several legal structures available for businesses operating in Texas. Each structure is listed below with a brief description of the entity.

Sole Proprietorship

A sole proprietorship exists when a single individual operates a business and owns all assets. A sole proprietor is personally liable for all debts, and business ownership is nontransferable. Under a sole proprietorship, the life of the business is limited to the life of the individual proprietor. The sole proprietorship makes no legal distinction between personal and business debts, and it does not require a separate income tax return. A sole proprietorship is often operated under the name of the owner. Whenever operating a business under a name other than the sole proprietor, an Assumed Name Certificate must be filed with the county clerk. Assumed Name Certificates are discussed later in this section.

General Partnership

A general partnership exists when two or more individuals or businesses join to operate a business. Under a general partnership, a separate business entity exists, but creditors can still look to the partners' personal assets for satisfaction of debts. General partners share equally in assets and liabilities. A general partnership requires an annual partnership income tax return (separate from the partners' personal returns). A general partnership may be operated under the names of the owners, or a different name. In either case, an Assumed Name Certificate must be filed with the county clerk.

Limited Partnership

A limited partnership is a partnership formed by two or more persons or entities, under the laws of Texas, and having one or more general partners and one or more limited partners. General partners share equally in debts and assets, while limited partners have limited debt obligations. A limited partnership must be registered with the Secretary of State. (See next section for details on the business name.)

Registered Limited Liability Partnership

A registered limited liability partnership is a general partnership that has been registered with the Secretary of State. A partner's liability in a registered limited liability partnership differs from that of an ordinary partnership. In a registered limited liability partnership, a partner is not individually liable, under some circumstances, for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of business by others in the partnership.

Corporation

A corporation (Subchapter C or S) is created when two or more individuals, partnerships, or other entities join together to form a separate entity for the purpose of operating a business in the state. A corporation has its own legal identity, separate from its owners. The corporation offers protection to the business owners' personal assets from debts and liabilities relating to the operation of the corporation. Taxation of the corporation varies depending on the *type* of corporation formed. A corporation must be registered with the Secretary of State.

A Subchapter C Corporation is taxed at a higher rate than an individual. The owners are not taxed personally for profits; however, the owners do pay personal taxes on any salaries and/or dividends, and the corporation is also taxed on the profits.

Owners of Subchapter S Corporations may deduct business losses on personal income tax returns, similar to a partnership. The Subchapter S Corporation also offers alternative methods for distributing the business income to the owners.

Limited Liability Company

A limited liability company is an unincorporated business entity which shares some of the aspects of Subchapter S Corporations and limited partnerships, and yet has more flexibility than more traditional business entities. The limited liability company is designed to provide its owners with limited liability and pass-through tax advantages without the restrictions imposed on Subchapter S Corporations and limited partnerships. A limited liability company must be registered with the Secretary of State.

BUSINESS NAME

Once the legal structure of the business has been determined, and if a separate business name will be used, the business name must be registered with the county clerk's office and/or the Secretary of State.

It is very important to do a thorough search when considering a business name. If a corporation and an unincorporated company have very similar names, neither automatically has the right to the name. If both parties have properly filed the Assumed Name Certificate, the courts will most likely have to decide this matter. Taking the time necessary to conduct the name research up front will help avoid legal costs after the business is opened and operating.

State Registration

All businesses operating in Texas as limited partnerships, registered limited liability partnerships, limited liability companies, corporations, professional corporations, nonprofit corporations, and professional associations must register with the Secretary of State. The Secretary of State provides a summary of requirements for the creation of these entities, but does not provide forms except for registration of a limited liability partnership. The Secretary of State publishes the *Filing Guide*, which offers guidelines for registering business entities. The guide also includes administrative

rules and sample forms promulgated by the Secretary of State. The guide costs \$35 and can be purchased directly from the Secretary of State (No longer available as of 2/15/2000). To order, refer to the telephone numbers listed on the next page.

Corporations, limited partnerships, and limited liability companies organized in other states or countries may transact business in Texas by obtaining a certificate of authority through the Secretary of State. The Secretary of State can provide forms for the certificate of authority. An out-of-state business may also consider the option of creating a Texas corporation, limited partnership, or limited liability company for transaction of business in Texas.

A name may not be used by more than one corporation in the state. The Secretary of State will perform a name search to verify that no other corporation, limited partnership, or limited liability company in Texas is using the exact name selected. To find out if a business name is available, call the Secretary of State and they will do an immediate computer search. The search is only for business names registered with the Secretary of State, and does not include business names registered only a county clerk.

If a corporation will transact business under names other than that stated in the articles of incorporation, the corporation must file an Assumed Name Certificate with the Secretary of State, and with the county clerk in which the principal office and registered office of the corporation are located. (See next section for details on Assumed Name Certificates.)

For more information, contact the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697.

General information and business name searches 512/463-5555

Order *Filing Guide* 512/475-2755 (No longer available as of 2/15/2000)

Fax on demand forms (call charge \$1.00/minute) 900/263-0060

Local Registration (Assumed Name Certificate)

If the business will operate as a sole proprietorship or a general partnership, an Assumed Name Certificate or d.b.a. (doing business as) for each name (or deviation of that name) the business will use must be on file with the county clerk in each county where a business premise will be maintained. If no business premise will be maintained, it should be filed in each county where business will be conducted.

If the business will operate as a corporation, limited partnership, or limited liability company, and the business will be identified by a name other than the name on file with the Secretary of State, an Assumed Name Certificate must be filed with the Secretary of State and each county in which the business will have a registered or principal office.

Neither the filing of an Assumed Name Certificate nor the reservation or registration of a company name imparts any real protection to the party filing the certificate. It is merely a formal process that informs the general public of the registered agent for a business and where official contact with the business can be made.

Filing the Assumed Name Certificate

Each county clerk office may use a different form; however, the information requested should be the same. Be prepared to provide the business name, mailing address, city, state, zip, expected period of operation, business type, and owner information.

Period of operation is the period of time the business will use the name. Ten years is the maximum length of time an assumed name filing is valid. However, if the name will be used for a period of less than ten years, indicate this on the form. Note that names must also be renewed every ten years.

Business type refers to the legal structure of the business. Indicate whether the business will operate as a corporation, partnership, sole proprietorship, etc.

Owner information is the name(s) of the owner(s), personal address(es), and signature(s). All owners' signatures must be notarized. This service is sometimes offered at the county clerk's office. The form cannot be filed until all owners have signed it and all signatures have been notarized.

The following information will be helpful in filing the Assumed Name Certificate in the county the business will operate.

First, write down the name of the business you will be considering. Pay close attention to capitalization, spacing, punctuation, etc. Consider this carefully as this name will identify the business to the public.

Next, search the county records for that exact business name in the assumed name books or computer. An assumed name filing is valid for ten years, so search records for the last ten years to verify that the name is available. One book will not necessarily encompass one year of filings, so check the front of the book for dates. Some records are computerized; however, a computerized index may not contain ten years of filing history. Use the computer for the period it covers, and then use the books for any of the remaining ten years. If the business name has been used, look in the margin to see if it has been abandoned. If the name has been abandoned, it can legally be used again. Many county clerk offices will provide a name search service for a nominal fee. The whole search process will often be taken care of through the mail. Please contact the local county clerk for verification of their process.

Finally, if the company name is available, fill out the assumed name form and have it notarized. Then file it with the county clerk's office. The county clerk will keep the original Assumed Name Certificate, so be sure to request several certified copies (at least one for the bank and one for your business records). For filing fee information and accepted form of payment, contact the local county clerk's office. Most county clerk offices accept cash, certified checks, or money orders. If processing via mail, send the forms by certified mail with a return receipt requested to verify receipt by the county clerk.