

# Hot Topics with the Secretary of State in 2010



*Presented to:*  
Capitol Area Paralegal Association  
April 28, 2010  
Austin, Texas



*Presented by:*  
Briana Godbey & Leigh Joseph  
Office of the Secretary of State

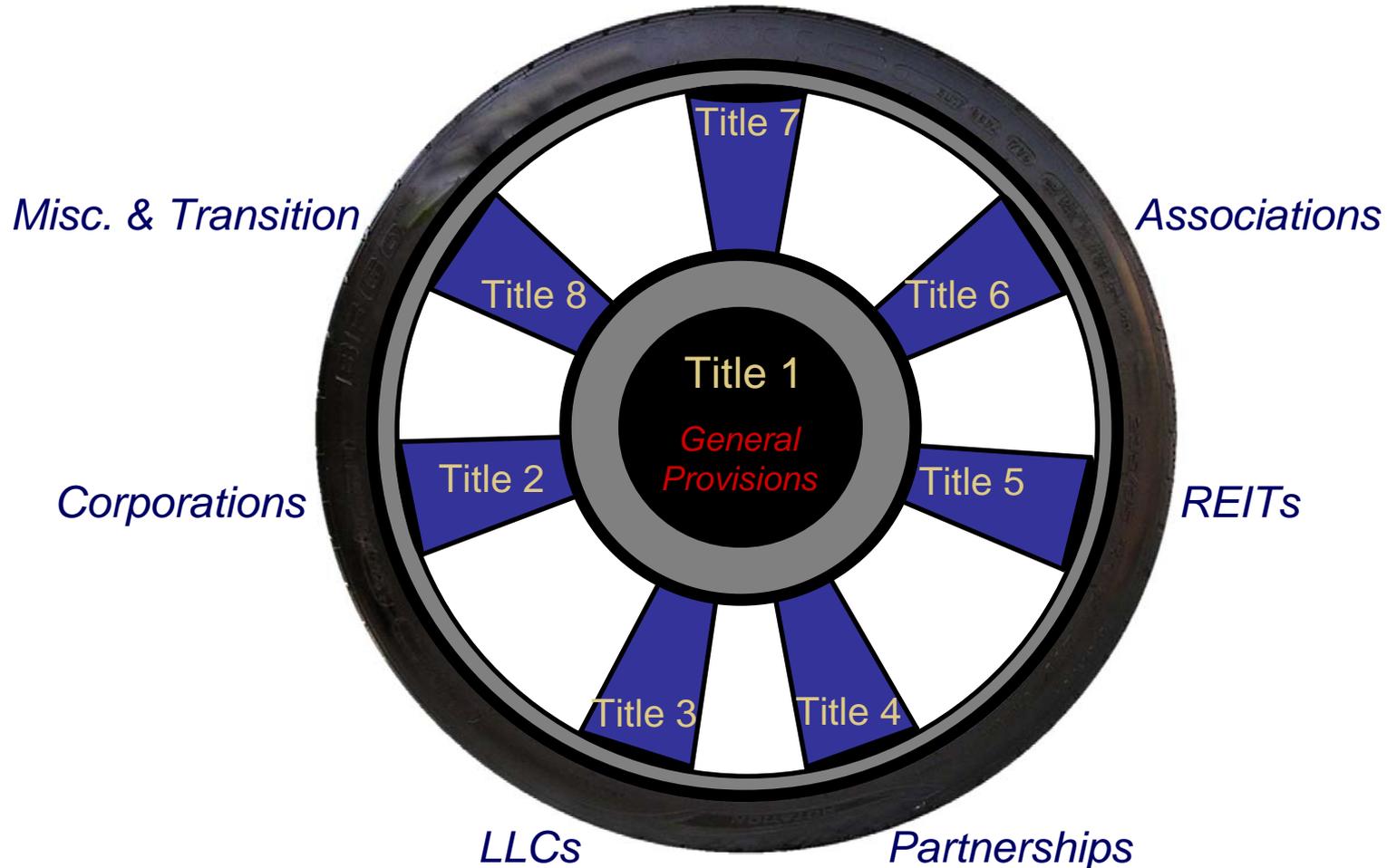


# BOC Governs

- ★ Regardless of formation date
- ★ On January 1, 2010, the following statutes were repealed:
  - ☒ Texas Business Corporation Act
  - ☒ Texas Non-Profit Corporation Act
  - ☒ Texas Professional Association Act
  - ☒ Texas Professional Corporation Act
  - ☒ Texas Limited Liability Company Act
  - ☒ Texas Revised Partnership Act
  - ☒ Texas Revised Limited Partnership Act
  - ☒ Texas Real Estate Investment Trust Act
  - ☒ Texas Miscellaneous Corporation Laws Act
  - ☒ Texas Cooperative Association Act
  - ☒ Texas Uniform Unincorporated Nonprofit Association Act

# Structure of the BOC

*Professional Entities*





# New Terminology

**Old**

**New**

~~Articles of Incorporation~~

Certificate of Formation

~~Incorporator~~

Organizer

~~Articles of Amendment~~

Certificate of Amendment

~~Articles of Dissolution~~

Certificate of Termination



## Must We Amend?

- ★ Immediate amendment not required
- ★ Conform certificate of formation to BOC in next amendment
- ★ SOS does not *require* new terminology or updates to references to prior law

# Name Availability





## Name Availability

- ★ Texas standard: same, deceptively similar, or similar requiring letter of consent
- ★ Statute: BOC § 5.053
- ★ Administrative Rules: 1 Tex. Admin. Code Chapter 79, Subchapter C



# The “First Two Word” Rule

- ★ A proposed entity name is similar requiring a letter of consent if:
  - The first two or more words of the proposed entity name are the same as, or deceptively similar to, the first two words of an entity name on file, and are not frequently used in combination.



# Examples

Proposed Name	Existing Name	Consent Required?
<u>Prime Property Realty</u> , LLC	<u>Prime Property Landscaping</u> , Inc.	Yes
<u>Hot Dog Publications</u> , Inc.	<u>Hot Dog Enterprises Corp.</u>	No



# The “Geographic Ending” Rule

- ★ A proposed entity name is similar requiring a letter of consent if:
  - The proposed entity name is the same as, or deceptively similar to, an entity name on file except for a geographic designation at the end of the name.



# Examples

Proposed Name	Existing Name	Consent Required?
Bull and Bear Club <u>of San Antonio</u>	Bull and Bear Club	Yes
San Antonio Bull and Bear Club	Bull and Bear Club	No
Exhibits International, LLC	Exhibits, Inc.	No



## Matters Not Considered

- ★ Prior SOS action
- ★ Preliminary SOS opinion
- ★ Action by applicant under proposed name
- ★ Timing of applicant's and existing entity's documents
- ★ Attempts to contact existing entity



# Matters Not Considered

- ★ Locations and business purposes
- ★ Whether existing entity is actively engaged in business, bankrupt, or intending to take action to make the name available (e.g., merge out of existence)
- ★ Which entity is more or less widely known
- ★ Trademark rights



## Names Reviewed

- ★ The following types of active names are included in a name availability search:
  - legal names of Texas corporations, LPs, LLCs, PAs, cooperatives, and REITs (filing entities);
  - legal and fictitious names of foreign filing entities;
  - name registrations; and
  - name reservations

# Names Reviewed

- ★ The following types of names are not reviewed for availability:
  - assumed names (except fictitious names of foreign filing entities) and
  - names of LLPs

# Limited Liability Partnerships



# LLP Registration

★ Does not create a partnership!

# The LLP “Umbrella”

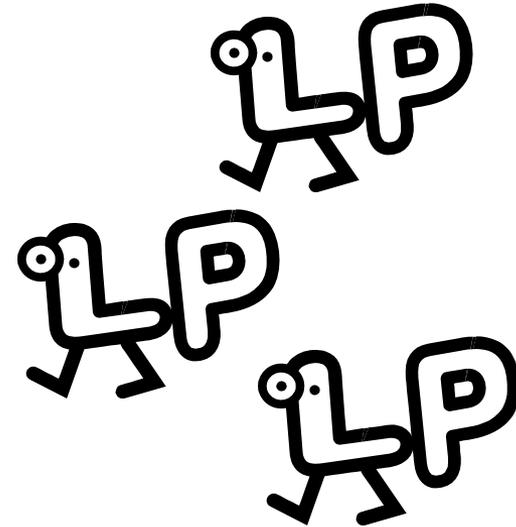




# General Partnership



# Limited Partnership



# The LLP “Umbrella”



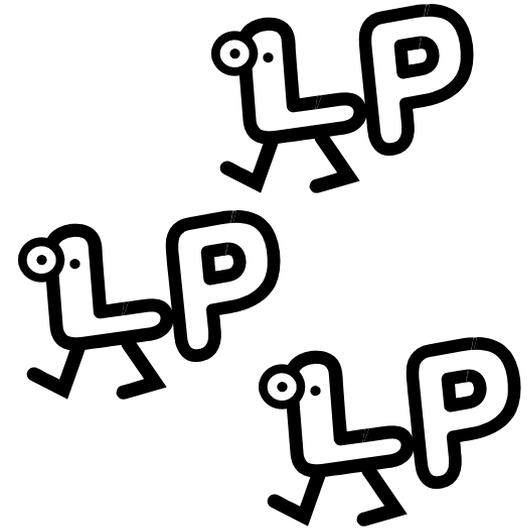


# *Limited Liability* Partnership





# *Limited Liability* Limited Partnership



# Obtaining Limited Liability Protection

- ★ To obtain limited liability protection, a partnership or limited partnership must:
  - register annually with the SOS; AND
  - provide \$100,000 in security or insurance designated to cover the specific types of liability protected by the registration.



# Formation and Registration Steps

1. Select organizational form of partnership
  - a. general partnership (no SOS filing)
  - b. limited partnership (SOS Form 207)
2. Register as LLP (SOS Form 701)
3. Obtain required security or insurance
4. Annually renew LLP (SOS Form 703)

# 2009 Legislative Changes





# 2009 Legislative Changes

- 1. Newly taxable entities**
- 2. Certificates of correction**
- 3. Changes in GP by a foreign LP**
- 4. Conversions**
- 5. Series LLCs**
- 6. Registered Agent Consent**

# Newly Taxable Entities



## Newly Taxable Entities

- ★ LPs, LLPs, and PAs are now taxable entities.
- ★ Tax certificates required for:
  - Voluntary terminations;
  - Withdrawals of foreign registrations;
  - Withdrawals of LLP registrations; and
  - Mergers or conversions (unless accompanied by alternate statement under BOC §10.156).
- ★ Tax clearance letters required for
  - Reinstatement following voluntary termination, involuntary termination, or revocation of foreign registration for LPs, LLPs, and PAs.

# Certificates of Correction



# Certificates of Correction

- ★ *SB 1442 amends the provisions regarding certificate of correction to allow a certificate of formation to be corrected by the organizer who filed the certificate.*
- ★ *For more information on whether a correction is an appropriate filing, please see §§4.101-4.105 of the BOC.*

# Required Amendments for Registered Foreign Limited Partnerships



## Change in General Partner of Foreign LP

- ★ Foreign LP must amend registration to disclose:
- ★ a change in name;
- ★ a change in the business or activity stated in the application for registration;
-  ★ the admission of a new general partner;
-  ★ the withdrawal of a general partner; or
-  ★ a change in the name of the general partner stated in the application for registration.

# Conversions

## Conversion

- ★ *The definition of conversion was expanded to resolve confusion between what is considered a conversion in Texas and considered a domestication, continuance or transfer transaction in another jurisdiction. §1.002(10)*



## Other Conversion Issues

1. Don't use SOS certificates of formation for the formation document in a conversion unless the language required by §3.005(7) is added:
  - A statement that the entity is 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.



## Other Conversion Issues, cont.

2. A domestic nonprofit corporation may not convert into a for-profit entity. §10.108
3. The BOC now allows a foreign filing entity to amend its registration to effect a transfer of the registration to a successor entity after a merger or conversion. (SOS Form 422)



## Automatic Withdrawal on Conversion

- ★ *The BOC was amended to provide that a foreign filing entity or foreign LLP registered in this state that converts to a domestic filing entity is considered to have withdrawn its registration on the effective date of conversion.*

# Series LLC



# Series LLC

- ★ *Chapter 101, subchapter M*
  - *What is a series LLC?*



## Series LLC cont.

- ★ *What are the filing requirements?*
  - *Domestic*
  - *Foreign*
- ★ Don't forget the assumed name certificate

## Series LLC cont.

- ★ SOS computer records do not reflect whether the LLC is authorized to establish or has established a series. However, the certificate of formation of a series LLC contains a notice reflecting this option.

# Registered Agent Consent



# Registered Agent Consent

- ★ A registered agent appointed on or after January 1, 2010 must consent in writing.
- ★ A person designated as a registered agent without consent may file a rejection.



## Registered Agent Consent cont.

- ★ Consent does not have to be filed with secretary of state.
- ★ If filed through SOSDirect, read the screen prompts closely.

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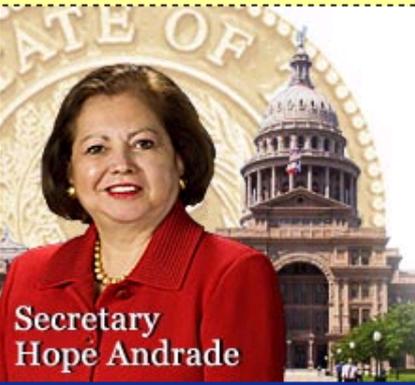


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**Election Outlook** | **Maintenance Notice** SOSDirect, along with various services, will be unavailable Friday, April 23rd from 6:00 p.m. through 10:00 p.m. Sunday, April 25th due to the election. We apologize in advance for any inconvenience this may cause.



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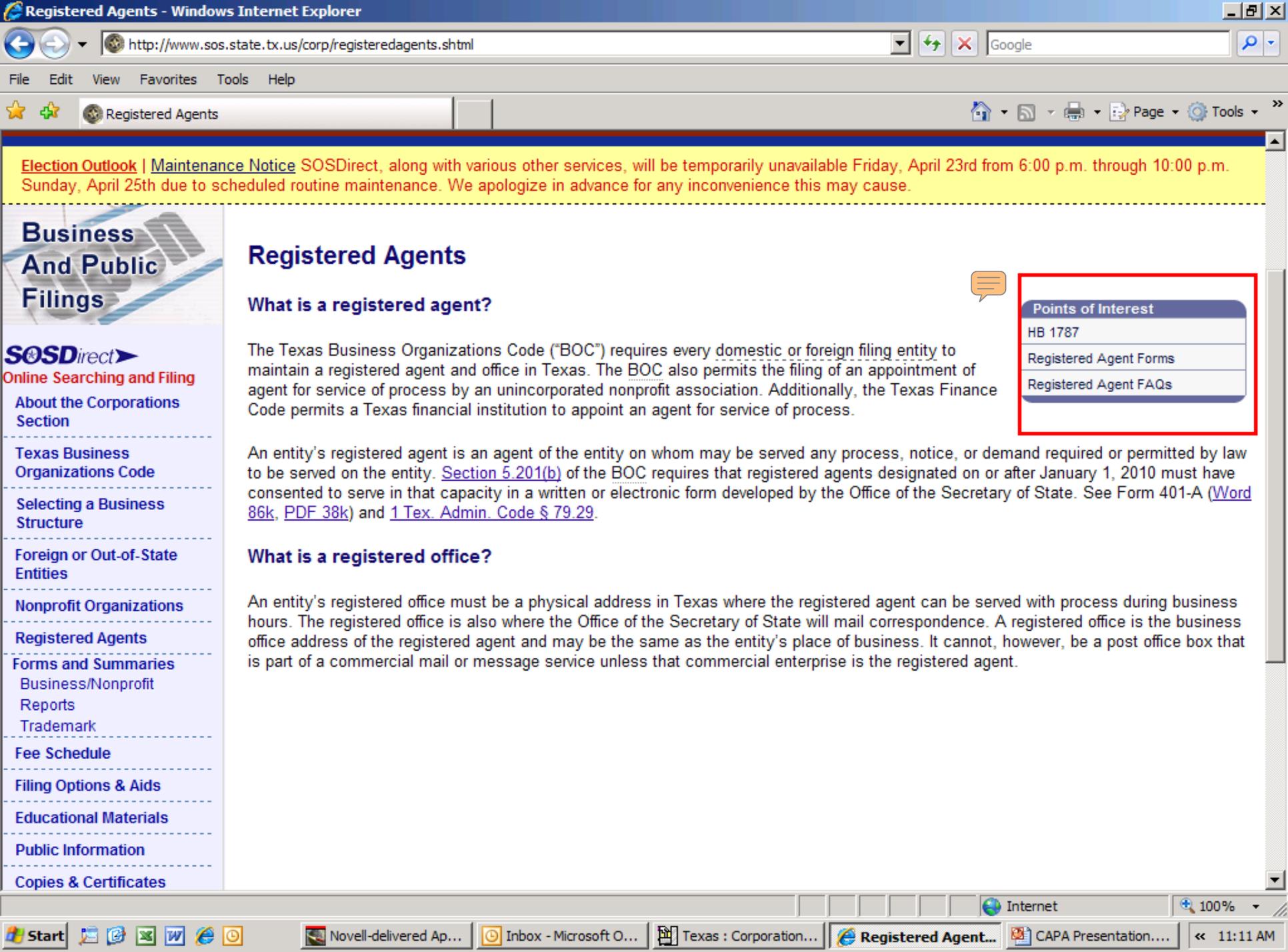
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## Business And Public Filings

### Registered Agents

#### What is a registered agent?

The Texas Business Organizations Code ("BOC") requires every domestic or foreign filing entity to maintain a registered agent and office in Texas. The BOC also permits the filing of an appointment of agent for service of process by an unincorporated nonprofit association. Additionally, the Texas Finance Code permits a Texas financial institution to appoint an agent for service of process.

An entity's registered agent is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity. [Section 5.201\(b\)](#) of the BOC requires that registered agents designated on or after January 1, 2010 must have consented to serve in that capacity in a written or electronic form developed by the Office of the Secretary of State. See Form 401-A ([Word 86k](#), [PDF 38k](#)) and [1 Tex. Admin. Code § 79.29](#).

#### What is a registered office?

An entity's registered office must be a physical address in Texas where the registered agent can be served with process during business hours. The registered office is also where the Office of the Secretary of State will mail correspondence. A registered office is the business office address of the registered agent and may be the same as the entity's place of business. It cannot, however, be a post office box that is part of a commercial mail or message service unless that commercial enterprise is the registered agent.

- Points of Interest
- HB 1787
- Registered Agent Forms
- Registered Agent FAQs

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# Expanded SOS Resources



# Resources

- ★ Website: [www.sos.state.tx.us](http://www.sos.state.tx.us)
  - SOSDirect
  - Forms
  - FAQs
- ★ SOS Staff

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- [Secretary Andrade visits three Waco-area businesses](#)  
WACO - Texas Secretary of State Hope Andrade is scheduled to recognize three long-time local businesses today to thank them for their contributions to the Texas economy. Joined by members of the Greater Waco Chamber of Commerce, Andrade plans to visit RAM Aircraft, LP, Central Texas Ironworks, and Englander Container and Display. [Full Release](#)
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Secretary Andrade visits Waxahachie to recognize four businesses that contribute so much to Texas' economy.

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CLIENT REFERENCE (optional): [NONE]

Client Reference:  Update Client Reference

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- FEIN Search
- Find - Supplemental
- TID Search
- Find - Global
- Document Number Search
- Find - Assumed Name
- Order - Certificates and Copies
- Find - People
- Bulk Order - Data
- Find - Registered Agent
- 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.

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

Change Documents  
Enter filing number and click 'File Document' or click 'Find Entity'

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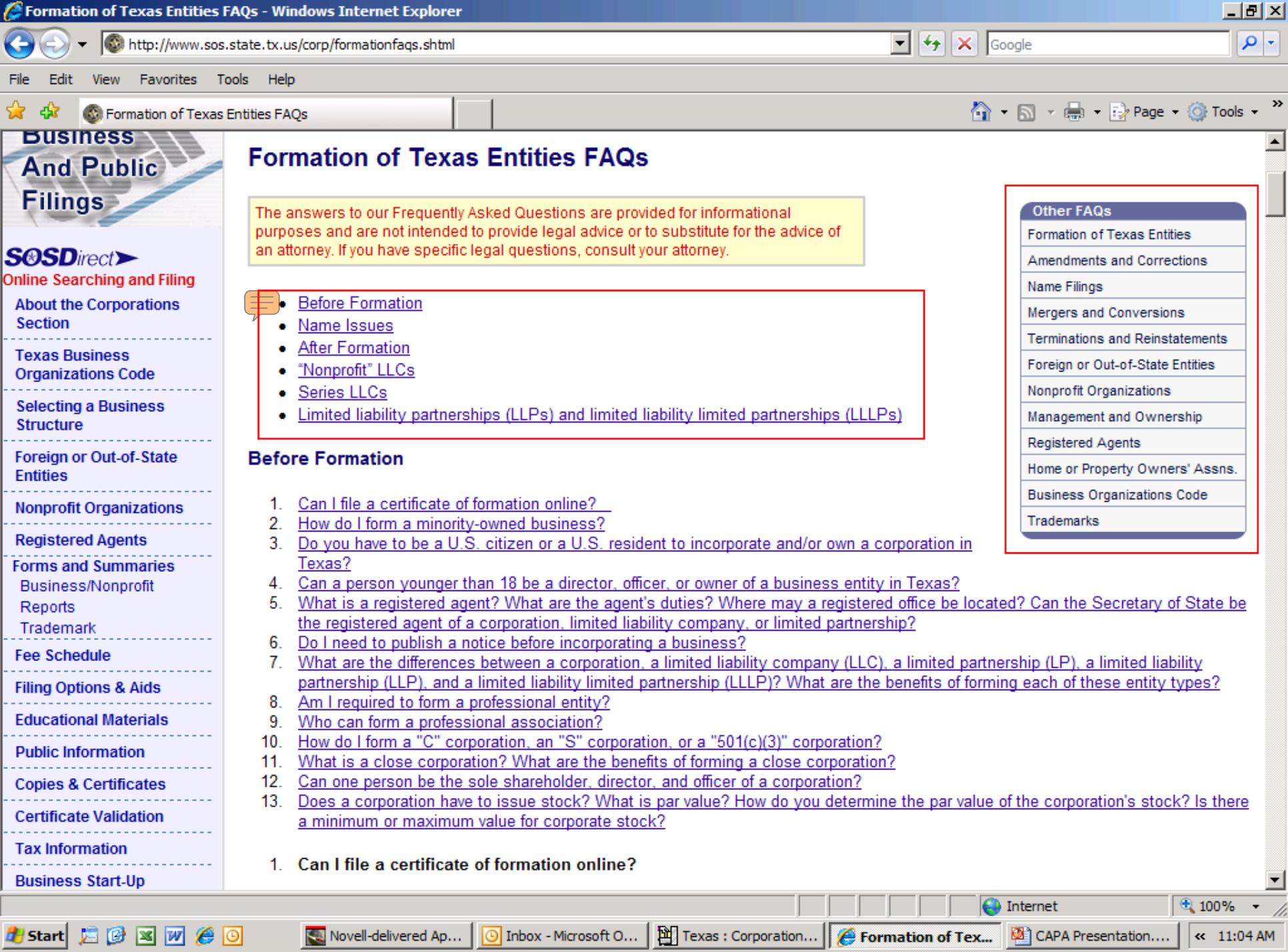
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<a href="#">Mergers and Conversions</a>	<a href="#">Terminations and Reinstatements</a>	<a href="#">Foreign or Out-of-State Entities</a>
<a href="#">Nonprofit Organizations</a>	<a href="#">Management and Ownership</a>	<a href="#">Registered Agents</a>
<a href="#">Home or Property Owners' Assns.</a>	<a href="#">Business Organizations Code</a>	<a href="#">Trademarks</a>



## Formation of Texas Entities FAQs

The answers to our Frequently Asked Questions are provided for informational purposes and are not intended to provide legal advice or to substitute for the advice of an attorney. If you have specific legal questions, consult your attorney.

- [Before Formation](#)
- [Name Issues](#)
- [After Formation](#)
- ["Nonprofit" LLCs](#)
- [Series LLCs](#)
- [Limited liability partnerships \(LLPs\) and limited liability limited partnerships \(LLLPs\)](#)

### Before Formation

1. [Can I file a certificate of formation online?](#)
  2. [How do I form a minority-owned business?](#)
  3. [Do you have to be a U.S. citizen or a U.S. resident to incorporate and/or own a corporation in Texas?](#)
  4. [Can a person younger than 18 be a director, officer, or owner of a business entity in Texas?](#)
  5. [What is a registered agent? What are the agent's duties? Where may a registered office be located? Can the Secretary of State be the registered agent of a corporation, limited liability company, or limited partnership?](#)
  6. [Do I need to publish a notice before incorporating a business?](#)
  7. [What are the differences between a corporation, a limited liability company \(LLC\), a limited partnership \(LP\), a limited liability partnership \(LLP\), and a limited liability limited partnership \(LLLP\)? What are the benefits of forming each of these entity types?](#)
  8. [Am I required to form a professional entity?](#)
  9. [Who can form a professional association?](#)
  10. [How do I form a "C" corporation, an "S" corporation, or a "501\(c\)\(3\)" corporation?](#)
  11. [What is a close corporation? What are the benefits of forming a close corporation?](#)
  12. [Can one person be the sole shareholder, director, and officer of a corporation?](#)
  13. [Does a corporation have to issue stock? What is par value? How do you determine the par value of the corporation's stock? Is there a minimum or maximum value for corporate stock?](#)
1. **Can I file a certificate of formation online?**

### Other FAQs

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Business/Nonprofit Reports  
Trademark
- Fee Schedule
- Filing Options & Aids
- Educational Materials
- Public Information
- Copies & Certificates
- Certificate Validation
- Tax Information
- Business Start-Up



## What else does the Business & Public Filings Division do?

- ★ Texas Register
  - Texas Administrative Code
- ★ Uniform Commercial Code
- ★ State trademark registrations
- ★ Statutory Documents
  - Notary
  - Authentications
  - Service of Process and other Registrations



# Contacting the secretary of state

## ★ SOS Public Information Response Team

- [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us)
- (512) 463-5555

## ★ SOS Attorneys

- [corphelp@sos.state.tx.us](mailto:corphelp@sos.state.tx.us)
- Leigh Joseph 463-5747
- Briana Godbey 463-5590
- Nahdiah Hoang 475-0218
- Mike Powell 463-9856
- Carmen Flores 463-5588
- Lorna Wassdorf 463-5591

# Texas Secretary of State Hope Andrade

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About the Office



Elections & Voter Information



State Rules & Open meetings



Corporations



Uniform Commercial Code



About the Statutory Documents Section



International Protocol

**Election Outlook** | **Maintenance Notice** SOSDirect, along with various other services, will be temporarily unavailable from 6:00 p.m. through 10:00 p.m. Sunday, April 25th due to scheduled routine maintenance. We apologize for any inconvenience this may cause.



Secretary Hope Andrade

### Points of Interest

- [Election Night Returns](#)
- [Am I Registered to Vote?](#)
- [Voter Registration Application](#)
- [Voter Questions \(FAQ\)](#)
- [Business/Nonprofit Forms](#)
- [Certificate Validation](#)

**SOSDirect**  
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United States' **Census 2010**  
Questions? Call 800-563-6448

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- Service of Process
- State Seal of Texas
- Legislative Bills
- Apostilles/Authentication of Documents
- Health Spas
- Service Searches
- Frequently Asked Questions (FAQs)
- Contact Us
- Community Search
- Credit Services Organization Search

### The Press Office

- New** [Secretary Andrade urges prompt response to census](#)  
AUSTIN - Secretary of State Hope Andrade joined representatives of the 2010 Census at the Capitol on March 12 to promote the importance of a complete count of all Texas residents. [Full Story](#)
- New** Gov. Rick Perry names Secretary of State Hope Andrade the Texas Census Ambassador to promote participation by Texans in the 2010

