

Business Entity Issues

2022 Agency Purchasing Conference



Legal Business Formations

Business Forms with No Separate Legal Status

- **Sole Proprietor** – Single person, no separate legal status, fully liable
- **Partnership** – Multiple people, no separate legal status, fully liable
- **Limited Partnerships** – Partnership with limited liability of some
- **Professional Partnerships** – Partnership of licensed professionals

Legal Business Formations

Business forms With Separate Legal Status

- **Limited Liability Company (LLC)** – Separate legal entity from owners
 - Owners are members
 - Limited liability of owners to value of membership interest
 - Created by articles of organization/SOS filing
 - Less corporate formality required
- **Professional Limited Liability Company** – LLC of licensed professionals
 - Same as LLC, just requires professional licensure

Legal Business Formations

Business forms With Separate Legal Status

- **Corporation** – Separate legal entity from owners
 - Owners are shareholders
 - Limited liability of owners to value of shares held.
 - Created by Articles of Incorporation/SOS filing
 - Must observe corporate formalities (shareholder meetings, board meetings, etc.)
- **Professional Corporation** – Corporation for providing licensed professional services
 - Same as corporation, just requires professional licensure

Secretary of State Filing

- Sec. of State Grants:
 - Certificate of Existence – West Virginia Businesses
 - Certificate of Authority – Foreign (Non-West Virginia) Businesses
 - Must have one or the other before conducting business in WV
 - Exemption from Filing Requirements
- All Businesses Must File – Not Just Government Contract Holders
 - Exceptions – Sole Proprietor, Partnerships not required to file or get exemption
- Every state has similar requirements.

Secretary of State Verification Public Contracts

- **Must Verify SOS Filing Status Prior to Awarding Contract**
 - wvOASIS does not do this - Must check manually on SOS Business Database
 - <http://apps.sos.wv.gov/business/corporations/>
 - Searching function is finicky so be precise and use search expanders
 - Check prompted by Legislative Audit
- **DO NOT AWARD CONTRACT IF:**
 - You cannot find vendor in SOS database that should be registered
 - Vendor has a termination date entered in the database

Business & Licensing

Business Organization Search

SEARCH TIPS: If you have trouble finding a business, try the following:

1. Enter one or more key words in the business name
2. Use the % symbol for a wild card search.
Example: searching for Fraternal Order Eagles 1234 ABCD, Inc.
%Fraternal%1234%
3. The search results will include what are commonly referred to as a fictitious business names in the results, if they have been registered with the State Tax Department.

Organization	<input type="text"/>
Agent/Officer/Name	<input type="text"/>
Show Advanced Search Options	<input type="button" value="Search"/> <input type="button" value="Reset"/>

[Back To Top](#)

Matching records found: **246**. Please note that the results are broken into four results types: *Org Name*, *Doing Business As*, *Name Change* and *Name Registrations/Reservations*. You may use the following four links to see the results for each type.

View search results by: [Org Name](#) | [DBA](#) | [Name Change](#) | [Registrations/Reservations](#)

Business Organization Detail

[Back to Corporations Search](#)

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FUNNEL END, INC.

Organization Information								
Org Type	Effective Date	Established Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
C Corporation	10/17/2001		10/17/2001	Domestic	Profit		5/21/2003	Revoked (Failure to File Annual Report)

[Back To Top](#)

Organization Information			
Business Purpose		Capital Stock	1000.0000
Charter County	Upshur	Control Number	43544
Charter State	WV	Excess Acres	
At Will Term		Member Managed	
At Will Term Years		Par Value	10.000000
Authorized Shares	100	Young Entrepreneur	Not Specified

[Back To Top](#)

Names Matter

None of these are the Same

- Verizon Connect Fleet USA LLC
- Verizon Connect Inc.
- Verizon Connect NWF Inc.
- Verizon Corporate Services Corp.
- Verizon Services Corp.
- Verizon Services Organization Inc.
- Verizon Wireless (VAW) LLC
- Verizon Wireless Services, LLC

Names Matter

- ABC Electrical Construction, Inc.
 - “Inc.” denotes corporation
- ABC Electrical Constructions LLC
 - “LLC” denotes limited liability company

These are not the same business entity.

Business Entity Naming Rules – Corporation W.Va. Code § 31D-4-401

A corporate name must contain one of the following:

corporation

incorporated

company

Limited

corp.

inc.

co.

ltd.



Business Entity Naming Rules – LLC

W.Va. Code Ann. § 31B-1-105

A Limited Liability Company name must contain one of the following:

Limited Liability Company

Limited Company

Limited Co.

Ltd. Company

Ltd. Co.

L.L.C.

LLC

L.C.

LC



DBA - What does it mean?

DBA or Trade Name denotes a name the business uses informally

- It does not denote a separate legal entity
- It must be on file with the SOS
- It's basically a business nickname

Example:

- Formal name: Bob's Tires and Service Center, LLC
 - DBA name: Bob's Tires
- or*
- Formal Name: Fenton Enterprises LLC
 - DBA name: Fun Factory

DBA - Why does it matter?

- If the vendor plans to bill using a DBA name they must have it on file with the SOS and include it in wvOASIS registration or the Auditor's Office will not pay the invoice.

Corporate Structure or Tax Status?

WV OASIS Vendor Registration - Collects Only Federal Tax Status

Secretary of State - Based on Legal Structure Not Tax Status

- **Sole Proprietor** – Tax Status and Legal Structure the Same
 - taxed as individual (income reported in individual tax return)
- **Partnership** – Tax Structure and Legal Structure the Same
 - taxed as partnership (income reported in individual tax return of each partner)
- **Corporation** – Tax Structure and Legal Structure the Same unless S-Corp.
 - C Corp. income reported on corporation's income tax return and dividends taxed on individual tax return
 - S Corp. can choose to be taxed as partnership or corporation.
- **Limited Liability Company** – Tax Status Differs From Legal Structure
 - Taxed as either sole proprietor, partnership, or corporation as the LLC may elect.

This distinction between Tax and Legal treatment can complicate vendor registration.

Mergers, Acquisitions, Assignments

Merger – Two or more business entities become one:

- Contract holder survives merger and absorbs the others entities
 - no change to contract needed
- Contract holder is absorbed by another entity
 - Change order required to contract to recognize new entity
 - State has the contractual right to approve this change

Mergers, Acquisitions, Assignments

- **Entity Acquisition/Purchase** – may be stock sale or asset sale
 - Stock sale - leads to parent subsidiary relationship between entities
 - No contract change required unless the purchased company is dissolved.
 - Asset sale - transfers all or nearly all assets of one entity to another without entity ownership change
 - This would require a change order to reflect the new owner.
 - State has the contractual right to approve or deny this change

Mergers, Acquisitions, Assignments

- **Assignment** – legal transfer of one or more assets to another.
 - Small scale transfers single contract
 - Large scale helps to complete an asset acquisition
 - Requires a change order to recognize the new owner
 - State has the contractual right to approve



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