



# **WV SECRETARY OF STATE BUSINESS REGISTRATION**

2023 Purchasing Conference

# WHO ARE YOU?

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# WHAT IS “DOING BUSINESS”?

- All purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and all activities of this state and its political subdivisions which involve the sale of tangible personal property or the rendering of service when such service activities compete with or may compete with the activities of another person.

W. Va. Code §11-12-1

# DOMESTIC V. FOREIGN

## **Domestic**

Formed under the laws of West Virginia

## **Foreign**

Formed under the laws of a government  
outside of West Virginia



# REGISTERING TO DO BUSINESS IN WEST VIRGINIA

## SOS & WV Tax

- Corporation (WV code §31D)
- Benefit Corporation (WV code §31F)
- Non-Profit Corporation (WV code §31E)
- Cooperative Association (WV code §31G)
- Limited Liability Company (WV code §31B)
- Limited Liability Partnership (WV code § 47B-10)
- Limited Partnership (WV code §47-9)
- Voluntary Association (WV code §47-9A)
- Business Trust (WV code §47-9A)

## WV Tax\*

- Sole Proprietorship
- General Partnership
- Joint Ventures
- Association\*\*

### §47-8-2

\*If any of these businesses use a trade name (DBA) that name needs to be registered with the Secretary of State in addition to WV Tax

\*\*Non-Profit Associations require an Agent of Process to be filed with the Secretary of State.

# ENTITIES THAT REGISTER WITH THE SECRETARY OF STATE FOR FORMATION OR AUTHORITY GENERALLY HAVE:



Limited Liability



Legal Name Protection



Annual Reporting Requirement (Jan 1st to June 30<sup>th</sup>)



Can be owned by another business



**ALL BUSINESSES  
HAVE SOME FORM  
OF REGISTRATION**



<p><b>Corporation</b></p> <p><u>Formed by:</u> Articles of Incorporation with SOS</p> <p><u>Ran by:</u> Profit will have Shareholders who elect a Board of Directors who may elect Officers</p> <p>Non-profit have no shares have a Board of Directors of at least 3 directors. That board may appoint officers. Some Non-profits have members that may appoint a board.</p>	<p><b>Limited Liability Company</b></p> <p><u>Formed by:</u> Articles of Organization with SOS</p> <p><u>Ran by:</u> Members (the owners) or Managers appointed by/from the Members</p>	<p><b>Partnership</b></p> <p><u>Formed by:</u> Partnership Agreement -LP file Certificate of Partnership with SOS -LLP file Statement of Registration with SOS</p> <p><u>Ran by:</u> General Partners (depending on the type of partnership, there may be Limited Partners who have no authority)</p>
<p><b>Association</b></p> <p><u>Formed by:</u> Filing for a Business Registration Certificate through WV Tax Div. -Non-profit Association must file an Agent of Process with SOS -*Voluntary Associations are distinct and form by filing Registration with SOS</p> <p><u>Ran by:</u> Owners, Member, or Officers; dependent on how the Association organizes.</p>	<p><b>Sole Proprietor</b></p> <p><u>Formed by:</u> An individual filing for a Business Registration Certificate through WV Tax Div.</p> <p><u>Ran by:</u> The individual</p>	<p><b>Professional Organizations (PLLC, Professional Corporations, &amp; Professional LLP)</b></p> <p><u>Formed by:</u> Filing the appropriate documents with their Governing WV Professional Board then submitting them to SOS.</p> <p><u>Ran by:</u> The appropriate officers, members, or partners dependent on the organization type.</p>



# FOREIGN COMPANIES

- Out-of-state companies will register with the same agencies they would register with if they were domestic.
- Out-of-state companies have the same protections of name and liability as domestic companies with regards to their Secretary of State registration.

# COMPLETED REGISTRATION IN WEST VIRGINIA

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## Registered with WV Secretary of State\*

**Articles of Formation** (Domestic): The filing of this document by SOS officially forms the organization

**Certificate of Authority** (Foreign): Identifies the business has met the requirements with SOS to do business in WV

Copies can be requested by completing a Customer Order Request.

If filed on One Stop, filers can recover filings from their email or by logging in.

\*Excludes businesses who do not have formation or registration with this office

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## IRS Employer Identification Number (EIN or FEIN)

Majority of businesses have or will acquired one.

Single member LLCs & Sole Proprietors may file under the officer's Social Security Number

It's FREE through the IRS and requires no documentation to apply. It does not prove the business is formed

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## WV Tax Division Business Registration Certificate

Identifies the business has met the requirements of the Tax Division to do business in WV

This is the "Business License"

Copies can be requested by contacting WV Tax and are sent by mail. Can also be obtained in by logging into [mytaxes.wvtax.gov](https://mytaxes.wvtax.gov).



# OTHER STATE DIVISIONS

Workforce WV

WV Professional Boards

Division of Labor

West Virginia Alcohol Beverage Control  
Administration

WV Lottery

# **EXEMPTIONS**

LLC §31B-10-1003

Profit Corporation §31D-15-1501

Non-Profit Corporation §31E-14-1401

These businesses will file the exemption with the  
WV Secretary of State



# LLC EXEMPTION

Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:

- (1) Maintaining, defending or settling an action or proceeding;
- (2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;
- (10) Transacting business in interstate commerce;
- (11) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign limited liability company in another state; and
- (12) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: *Provided*, That the foreign limited liability company does not produce goods, services or otherwise conduct business in the State of West Virginia.

The ownership in this state of income-producing real property or tangible personal property constitutes transacting business in this state.

This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under any other law of this state.

# FOR PROFIT CORPORATION EXEMPTION

The following activities, among others, do not constitute conducting affairs:

- (1) Maintaining, defending or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Selling through independent contractors;
- (5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (6) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
- (7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts: *Provided*, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;
- (8) Owning, without more, real or personal property;
- (9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (10) Conducting affairs in interstate commerce;
- (11) Granting funds or other gifts;
- (12) Distributing information to its shareholders or members;
- (13) Effecting sales through independent contractors;
- (14) The acquisition by purchase of lands secured by mortgage or deeds;
- (15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;
- (16) The management, rental, maintenance and sale or the operating, maintaining, renting or otherwise dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale;
- (17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state; and
- (18) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: *Provided*, That the foreign corporation does not produce goods, services or otherwise conduct business in the State of West Virginia.

The list of activities is not exhaustive.

# NON-PROFIT CORPORATION EXEMPTION

The following activities, among others, do not constitute conducting affairs

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Selling through independent contractors;
- (5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (6) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property: *Provided*, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;
- (7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (8) Owning, without more, real or personal property;
- (9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (10) Conducting affairs in interstate commerce;
- (11) Granting funds or other gifts;
- (12) Distributing information to its shareholders or members;
- (13) Effecting sales through independent contractors;
- (14) The acquisition by purchase of lands secured by mortgage or deeds;
- (15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;
- (16) The management, rental, maintenance and sale; or the operating, maintaining, renting or otherwise, dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale; and
- (17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state.

# TRADE NAMES / DBA

- DBA = Doing Business As
- Any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the original certificate establishing the business entity or by an amendment (Legal Name).
- Tradenames and DBA are synonyms in this context
- Any business type can utilize a DBA.
- DBA must be distinguishable from all Legal Names on file with WV SOS if the applicant is registered with WV SOS
- All DBAs are to be filed with the Secretary of State



# FORCED DBA

- A Tradename or DBA a foreign company must use in West Virginia due to their legal name not meeting WV Code requirements or conflicts with another company's legal name registered with the WV SOS.
- A foreign company may opt to use a Forced DBA even if there is no conflict.

# CHECKING FOR NAME AVAILABILITY

- Under West Virginia law, “distinguishability” means: A difference between names which would allow a person to recognize or perceive the name of the business as being noticeably different including:
  - (1) At least a one-word difference between names, when the words are common terms, and the company is, or may appear to be, in a similar business; and
  - (2) At least a word order difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.
- However, a one-word difference is not always distinguishable enough to be noticeably different.
  - Guidance for Selecting Business Organization Names in West Virginia can be found at [SOS.WV.GOV](https://sos.wv.gov)
- Company names may be checked against the Secretary’s database via the search bar at [SOS.WV.GOV](https://sos.wv.gov)
- Names can be reserved by submitting a Name Reservation Form
- If a name on an application is unavailable, the Secretary of State’s Office will reach out to find a resolution prior to rejection of the application.



# BEST WAY TO SEARCH

- Search engine is sensitive to spacing and punctuation.  
“A. B. C. Corp” will not come up if you search “ABC Corp”

- Best way to search is using ‘wild card searching’

Break up terms with % when searching

Search A%B%C%Corp% when searching “A. B. C. Corp”

Search %Teen%Age%Mutant%Ninja%Turtle% to find “The Teenage Mutant Ninja Turtles Inc.”

# TERMINATION, DISSOLUTION, & REVOCAATION

Termination / Cancellation:



**THANK YOU**