

Secretary of State Registration FAQs

Q1 -- Which Entity Types can be registered with the Secretary of State?

- Corporation
- Statutory Close Corporation
- Limited Liability Company (filing as a Corporation)
- Limited Liability Company (multiple member)
- Limited Liability Company (single member)
- Limited Liability Limited Partnership
- Limited Liability Partnership (filing as a Corporation)
- Limited Liability Partnership (not filing as a Corporation)
- Limited Partnership
- Non-Profit Corporation
- Professional Corporation

Note: Partnerships and Sole Proprietorships are not registered with the Secretary of State's office.

Q2 -- What information do I need to start a business as a domestic corporation with the Secretary of State?

Refer to the Checklist for a Domestic Corporation.

For domestic Corporations, SCBOS generates a Signature package for the attorney. An attorney must sign the Signature sheet and have it scanned and uploaded to SCBOS.

Q3 -- What do I need to register as a foreign (out-of-state) corporation with the Secretary of State?

Refer to the Checklist for a Foreign Corporation.

For foreign Corporations, an officer must sign the Signature sheet and a Certificate of Existence no older than 30 days is required to be scanned and uploaded.

Q4 -- What do I need to register a Non-Profit Corporation with the Secretary of State?

Refer to the Checklist for a Non-Profit Corporation.

For domestic Non-Profit Corporations, SCBOS generates a Signature sheet which can be printed from SCBOS, scanned and uploaded back to SCBOS. For Non-Profit

Corporations, an officer must sign the Signature sheet and a Certificate of Existence no older than 30 days is required to be scanned and uploaded.

Those intending to become a 501(c)(3) corporation should consider adding the required provisions prior to the first submission, so that a second submission is not required.

Applying for 501(c)(3) Tax-exempt Status URL: <https://www.irs.gov/pub/irs-pdf/p4220.pdf>

Application for Recognition of exemption 1023 URL: <https://www.irs.gov/uac/about-form-1023>

Q5 -- What do I need to register a Statutory Close Corporation with the Secretary of State?

Refer to the Checklist for a Statutory Close Corporation.

For domestic Statutory Close Corporations, SCBOS generates a Signature package for the attorney. An attorney must sign the Signature sheet and have it scanned and uploaded to SCBOS. For foreign Statutory Close Corporations, an officer must sign the Signature sheet and a 6

Refer to the Checklist for a Professional Corporation.

For domestic Professional Corporations, SCBOS generates a Signature package for the attorney. An attorney must sign the Signature sheet and have it scanned and uploaded to SCBOS. For foreign Professional Corporations, an officer must sign the Signature sheet and a Certificate of Existence no older than 30 days is required to be scanned and uploaded.

Q6 -- What do I need to register a Limited Liability Company with the Secretary of State?

Refer to the Checklist for a Limited Liability Company.

For domestic Limited Liability Companies, SCBOS generates a Signature sheet that must be signed, scanned and uploaded to SCBOS. For foreign Limited Liability Companies, a Certificate of Existence no older than 30 days is also required to be scanned and uploaded.

Q7 -- What do I need to register a Limited Partnership with the Secretary of State?

Refer to the Checklist for a Limited Partnership.

For domestic Limited Partnerships, SCBOS generates a Signature sheet that must be signed, scanned and uploaded to SCBOS. For foreign Limited Partnerships, a Certificate of Existence no older than 30 days is also required to be scanned and uploaded.

Q8 -- What will I need to register a Limited Liability Partnership with the Secretary of State?

Refer to the Checklist for a Limited Liability Partnership.

For domestic Limited Liability Partnerships, SCBOS generates a Signature sheet that must be signed, scanned and uploaded to SCBOS. For foreign Limited Liability Partnerships, a Certificate of Existence no older than 30 days is also required to be scanned and uploaded.

Q9 -- How do I Adopt a Fictitious Name?

Only foreign businesses may adopt a fictitious name. A fictitious name can be obtained for a foreign (out of state) business that is authorized to transact business in this State because its legal entity name is already registered in the State of South Carolina. The following entity types may apply: a foreign Corporation, a foreign LLC, a foreign Non-Profit Corp., a foreign Professional Corp., and a foreign Statutory Close Corporation.

When executing the “Start New Business” workflow, if the business entity name of a foreign business is unavailable, the user is asked to enter a fictitious business name. In this way both the legal business entity name and the fictitious business entity names are registered.

Q10 -- How do I Assume a Business Name?

Only a limited partnership (Foreign or Domestic) can assume a business name. If you are registering a new business through SCBOS, you may then apply for an “Assumed Business Name”. Click on "Apply for Licenses/Permits/Registrations" located on the Location Home Page. The “Assumed Business Name” item will not appear in the list until after all Licenses/Permits/Registrations associated with registering a location are accepted.

Q11 -- What is a foreign business entity?

“Foreign” business entities are business entities that are first created and registered outside the state of South Carolina.

All business entities are required to register as a Domestic or Foreign business entity if they are doing business in the state of South Carolina.

Q12 -- What is a domestic business entity?

“Domestic” business entities are business entities that are created and registered in the state of South Carolina.

All business entities are required to register as a Domestic or Foreign business entity if they are doing business in the state of South Carolina.

Q13 -- Do I need to Register or Reserve a Business Name?

Reserving a business name is not the same as registering a business.

If you would like to reserve a business entity name prior to registering a business entity with the Secretary of State then select “Reserve Name”. This is done if you are not ready to file your articles of incorporation because, for example, the agent’s name is unknown. A name reservation is only good for 120 day nonrenewable period. Foreign and domestic entities can Reserve a name for 120 days under §33-4-102, 33-31-402, 33-44-106. Foreign entities may reserve their legal name or a fictitious name.

Foreign entities also have the option to Register a name under §33-4-103, 33-31-403, 33-44-107. A foreign entity may choose to do this if they are planning on expanding into SC, but they are not yet transacting business. This registration of the name is good for one calendar year (they all expire December 31st). Only a legal name can be registered. If a foreign company is looking to hold a fictitious name, they must do this under reserve, not register.

Once the entity name (not business) is registered (reserve or register a name), a reference number will be issued by the Secretary of State’s office. This number is then used when you register the business in SCBOS.

NOTE: If you are filing your articles, domestic or foreign, you DO NOT have to reserve or register an entity name.

Q14 -- What should I do when my application is rejected by the Secretary of State?

The reason for rejection will be found in your User Workspace. Click on the “Add New/Existing Business” to return to the first page of the application. All information was saved. Your checking or savings account or credit card account was not charged. Once you are in the application, click ‘Continue’ until you come to the page you need to correct. Make the appropriate correction and proceed to check out and pay.

Q15 -- Does a Foreign Business Entity have to have a Certificate of Authority to do Business in South Carolina?

Yes, a foreign business entity type as previously defined, may not transact business in South Carolina until it obtains a Certificate of Authority from the Secretary of State. Guidelines for who needs to register: SECTION 33-15-101 -- Authority to transact business required.

- 1) If the business entity has a physical location in South Carolina or has inventory in South Carolina, in other words, if the business has a presence in South Carolina, then the business is transacting business in South Carolina. A business merely owning property in South Carolina does not constitute doing business in South Carolina.
- 2) The following activities, among others, do not constitute transacting business within the meaning of above:
 - a. maintaining, defending, or settling a proceeding;
 - b. holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

- c. maintaining bank accounts;
- d. maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- e. selling through independent contractors;
- f. 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;
- g. creating or acquiring any indebtedness, mortgages, and security interests in real or personal property;
- h. securing or collecting debts or enforcing mortgages, security interests, or other rights in property securing debts;
- i. owning, without more, real or personal property;
- j. 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;
- k. transacting business in interstate commerce;
- l. owning and controlling a subsidiary corporation incorporated in or transacting business within this State; or
- m. owning, without more, an interest in a limited liability company organized or transacting business in this State.

This list of activities is not exhaustive. You may want to consult with an attorney to determine your business requirements to South Carolina.

A foreign business entity transacting business in South Carolina without a Certificate of Authority may not maintain a proceeding in any court in this State until it obtains a Certificate of Authority.

Q16 -- Is the Business or entity Name that is accepted by the Secretary of State automatically Trade Marked in the State of South Carolina?

No. The Secretary of State maintains a database of unique business entity names. When SCBOS indicates that the business entity name is unavailable, it means that a business of the same entity name is already registered with the Secretary of State. If the business entity name is available, you will be able to click on "Next" to proceed to the next screen.

A trademark or service mark may be registered separately with the Office of the Secretary of State provided the mark meets all the requirements of the South Carolina Trademark and Service Mark statute. Registration of the mark should be renewed every five years. Go to www.scsos.com for more information.

Q17 -- Why must I upload all documents required by the Secretary of State?

Uploading documents is required primarily for two reasons: (1) many users failed to send in the required documents to the Secretary of State, thinking that their business was registered once they checked out and (2) the Department of Revenue only issues licenses, permits and registrations to legal businesses.

There are three possible documents required by the Secretary of State: (1) Signature page, (2) Certificate of Existence that is no older than 30 days (foreign businesses only) and (3) possibly provisions that you want recorded. Whichever documents are required, they must be uploaded to SCBOS. In most cases this means scanning the documents.

Q18 -- Why is a business name not available today? It was available yesterday.

When reserving/ registering a name with the Secretary of State or registering your business using Start New Business, the user must pay for the application before the name is officially reserved or registered. In the meantime, an application may have been paid for by another user, using the same business name.

Q19 -- Why does SCBOS indicate that the name is not available?

SCBOS checks to determine whether the name is available at the Secretary of State.

There are two primary reasons why a name may not be available:

1. It has been reserve or registered by someone else or
2. The requirements for a name are not met. An example of the latter is that when reserving or registering as a corporation, the words Inc., Incorporated, Corp. or Corporation must be in the name.

Q20 -- What is the difference between Reserve a Name and Register a Name?

Domestic business entities have the option of reserving a name with the state of South Carolina if it is available. This option is particularly useful prior to registering to do business in South Carolina. This reservation expires 120 days from the date of filing and may not be renewed. Reserving your name does not, in and of itself, provide an exclusive right to use that name on or in connection with any product or service. Use of a name as a trademark or service mark will require further clearance and registration and be affected by prior use of the mark.

Foreign businesses may register a business name. The registration expires at the end of each calendar year, but may be renewed.

Foreign businesses may register a fictitious name with the state of South Carolina if the foreign business name is unavailable in South Carolina. Duplicates of an existing name will not be accepted. The registration is valid for the current calendar year.

Reserving or Registering a Name is not the same as registering a business or executing Start New Business.

Q21 -- When I entered the foreign business name, SCBOS indicated the name is not available.

This means that the foreign business name is not available in South Carolina because another business already has registered the same business with the state. Please don't change the name because the business name entered must be the same as the name on the Certificate of Existence for the foreign business. Just click "Continue" and enter a fictitious name that is unique in the State of South Carolina. Sometimes this name is called a "Doing Business As" (DBA) name. Don't confuse the fictitious name with the Location DBA name even though they may be the same.

Q22 -- How do I enter a Business Name?

The name of a corporation must contain "Inc", "Corp", "Incorporated", or "Corporation" and exclude "bank" or "finance".

The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

The name of a professional corporation must contain the words "professional corporation", "professional association", "service corporation", or "chartered" or the abbreviation "P.C.", "PC", or "P.A.", or "PA".

The name of a registered limited liability partnership must contain the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

The name of each limited partnership must contain the words "limited partnership" or the abbreviation "LP", or "L.P."

Non-Profit names should not contain any word indicating entity type, except for possibly corporations. For example, LLC should not be included by a corporation, while Inc. may be included.

Q23 -- Why do I need a Registered Agent?

All business registrations with the Secretary of State require, by law, an agent with a physical address in South Carolina. An agent, or as it is sometimes called, designated agent, can be almost anyone of legal age and a legal resident of South Carolina. An agent is someone that is designated to receive legal documents served on the business in the event of administrative or legal action or to receive other official business documents. An agent has an obligation to forward the “legal documents” to the business. An agent’s name and address are publically available and are displayed on the Secretary of State’s Web site.

Individuals that can be designated to be an agent include, but are not limited to, an organizer of a business, a member of an LLC, an employee of the business, an attorney, or an accountant. Foreign businesses may need to employ a business that supplies agent services. One Web site that lists some agents is located at www.registered-agent-listings.com. Using a search engine will identify other suppliers.

Q24 -- What happens when you successfully check out?

Each application that is successfully checked out is assigned a Transaction Reference Number. This number can be found in your Workspace and on your receipt.

Secretary of State Registrations and change applications require approval by the Secretary of State and may take a few business hours.