

TITLE 1. ADMINISTRATION
PART 4. OFFICE OF THE SECRETARY OF STATE
CHAPTER 79. BUSINESS ENTITY FILINGS
SUBCHAPTER C. ENTITY NAMES

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§79.30. Definitions. The following terms as used in this Chapter shall have the following meanings:

(1) "Consent" means written notarized consent signed by an officer or authorized agent of the consenting entity.

(2) "Key word" means a word or words that alters the proposed name sufficiently to make it distinguishable in the record. Key word does not include:

(A) an article of speech or a conjunction;

(B) a preposition, unless the addition, substitution or omission of the preposition alters the name sufficiently to make it distinguishable;

(C) the word "company" or abbreviation "Co." unless the addition or omission of the word or abbreviation alters the name sufficiently to make it distinguishable; or

(D) an organizational identifier which operates as an organizational identifier for the entity or appears after all key words in the name.

(3) "Simultaneous submission" means the submission of two or more documents at the same time under the same cover by mail, fax or delivery. The submitter must be the same for all documents being submitted simultaneously.

Source Note: The provisions of this §79.30 adopted to be effective June 1, 2018, 43 TexReg 3341

§79.31. Applicability of Rules.

(a) Except as provided by subsection (b) of this section, these rules apply to all filing instruments, which are required to be reviewed for name availability, received by the secretary of state on or after June 1, 2018.

(b) These rules apply to name reservations and name registrations processed by the Secretary on or after June 1, 2018.

(c) The Secretary may not accept for filing proposed entity names which are the same. The Secretary may only accept those proposed names which are not distinguishable if consent is granted in accordance with §79.40 of this subchapter (relating to Names that are Available with Consent).

(d) The Secretary may accept a name if the entity or person seeking acceptance of the filing instrument with the indistinguishable name delivers to the Secretary a certified copy of the final judgment of a court of competent jurisdiction that establishes the entity's or person's right to the name in this state.

Source Note: The provisions of this §79.31 adopted to be effective June 1, 2018, 43 TexReg 3341

§79.32. Characters of Print Acceptable in Names.

(a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, symbols capable of being reproduced on a standard English language keyboard, and such other symbols as permitted by the secretary of state's database and as posted on the secretary of state's website, or a combination thereof.

(b) No distinction as to type face or font in the presentation of an entity name will be recognized. Subscript or superscript characters cannot be entered into the computer records of the secretary of state; consequently, such characters will not appear above or below the other characters in the entity name. Example: H2 O will appear as H2O. The secretary of state, however, will recognize the use of either upper or lower case letters in the presentation of the entity name.

(c) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(d) The symbols recognized as part of a name may include ! " \$ % ' () * ? # = @ [] / + & and -.

Source Note: The provisions of this §79.32 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.33. False Implication of Governmental Affiliation; False Implication of Purpose.

(a) The entity name may not be one that might falsely imply governmental affiliation (example: Texas Real Estate Commission, Inc.).

(b) The entity name may not imply a purpose that would be unlawful for the entity to conduct.

(1) The words "insurance" or "surety" must be accompanied by other words that remove the implication that the entity purpose is to be an insurer. The name may include the phrase "insurance agency," "insurance agent," "surety agency," or "surety agent."

(A) Example: John Hancock Insurance Company or A-1 Surety Company would not be filed.

(B) Example: John Hancock Insurance Agency, Inc. or A-1 Surety Agents, Company would be filed.

(2) The words "bail bond" imply an unlawful purpose as entities with these powers must be organized under the Texas Insurance Code and these words may not be used in the name of a business entity. Example: Ace Bail Bonds, Inc. would not be filed.

Source Note: The provisions of this §79.33 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.34. Restricted Words.

(a) Where prohibited by §16.105 of the Texas Business & Commerce Code, an entity name cannot include the words, "Olympic," "Olympiad," or "Citius Altius Fortius," or a combination or simulation of those words or use a trademark, trade name, symbol or insignia of the International Olympic Committee or the United States Olympic Committee without the authorization or permission of the United States Olympic Committee. Example: Olympic Tours, Inc. would require a letter of consent, authorization, or no objection from the United States Olympic Committee.

(b) Where prohibited by §31.005 and §181.004 of the Texas Finance Code, an entity name cannot include the words "bank," "bank and trust," "trust," "trust company" or a similar term, phrase, or foreign language word unless accompanied by a no objection letter from the Banking Commissioner.

(c) Where prohibited by §61.313 of the Texas Education Code, an entity name cannot include the words "College," "University," "School of Medicine," "Medical School," "Health Science Center," "School of Law," "Law Center," or "Law School," whether in English or in another language, unless accompanied by a no objection letter from the Texas Higher Education Coordinating Board.

(d) Where prohibited by §5.062 of the Texas Business Organizations Code, an entity name cannot include the words "Veteran," "Legion," "Foreign," "Spanish," "Disabled," "War," or "World War" if the name implies the entity is created for the benefit of war veterans and their families, without written approval issued from a veterans organization pursuant to §5.062 of the Texas Business Organizations Code.

Source Note: The provisions of this §79.34 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.35. Foreign Words Not Translated.

(a) Although entity names may consist, in whole or in part, of words in a foreign language which utilize letters of the Roman alphabet, such words will not be translated for purposes of determining entity name availability.

(1) Example: "Tejas Enterprises" is distinguishable from "Texas Enterprises".

(2) Example: "Casa Blanca Productions" is distinguishable from "White House Productions".

(b) Where the difference in the names consists in the use or omission of different articles, prepositions, or conjunctions of speech, although in a foreign language, the names will be considered the same.

(1) Example: "Las Brisas" is the same as "Brisas".

(2) Example: "La Boutique" is the same as "Le Boutique".

Source Note: The provisions of this §79.35 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.36. Grossly Offensive Name. The entity name may not be one that is deemed to be so grossly offensive as to be unacceptable as an entity name.

Source Note: The provisions of this §79.36 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.37. Organizational Identifiers.

(a) Acceptable organizational identifiers are set forth in §§5.054 - 5.059 of the Texas Business Organizations Code.

(b) The following words, when used alone, do not satisfy the statutory requirements for organizational identifiers:

- (1) "companies," "corporations," "incorporation," and "unlimited;";
- (2) "limited partnerships;" and
- (3) "limited" or "company," to identify a limited liability company.

(c) A nonprofit corporation may omit an organizational identifier, but may not solely have an organizational identifier which is not consistent with §5.054 of the Texas Business Organizations Code.

(d) The words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC" may be used as the words of organization for a domestic public benefit corporation.

Source Note: The provisions of this §79.37 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.38. Distinguishable Names. Without limiting the discretion of the Secretary of State to determine that a proposed name is the same as an existing name, entity names are distinguishable and are therefore available if a comparison of the names reveals sufficient differences, or if one or more of the following conditions exist:

- (1) A difference of at least one key word.
 - (A) "Sunshine Community Development" is distinguishable from "Sunshine Community Properties".
 - (B) "United" is distinguishable from "United One".
 - (C) "Real Homes of Austin" is distinguishable from "Real Homes".
 - (D) "Texas Cowboys" is the same as "The Texas Cowboys".
- (2) The key words are the same but are in a different order.
 - (A) "Summit Energy" is distinguishable from "Energy Summit".
 - (B) "Global One" is distinguishable from "One Global".
 - (C) "Austin Auto Parts" is distinguishable from "Auto Parts of Austin".
- (3) The key words or contractions of key words are derived from the same root word.
 - (A) "Great Products" is distinguishable from "Great Productions".
 - (B) "Magic Professionals" is distinguishable from "Magical Professionals".
- (4) The key words are the same but are in a different language.
 - (A) "Casa Blanca Productions" is distinguishable from "White House Productions".
 - (B) "Tejas Enterprises" is distinguishable from "Texas Enterprises".
 - (C) "El Rodeo" is the same as "Rodeo" or "The Rodeo".
- (5) The key word or words sound the same but at least one word, on its face, has a different meaning or connotation.
 - (A) "Jones Tires" is distinguishable from "Joan's Tires".
 - (B) "Capitol Investments" is distinguishable from "Capital Investments".
 - (C) "Express Auto" is the same as "Xpress Auto".
 - (D) "One World" is the same as "1 World".
- (6) The key word or words are the same except for the addition, substitution, or omission of prepositions which alter the names sufficiently to make the names distinguishable.
 - (A) "In the Know" is distinguishable from "Know".
 - (B) "Friends" is distinguishable from "Between Friends".
 - (C) "Books for People" is distinguishable from "Books by People".
 - (D) "Look to the Future" is the same as "Look toward the Future".

Source Note: The provisions of this §79.38 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.39. Same Defined. Without limiting the discretion of the Secretary of State to determine that a proposed name is the same as an existing name, entity names are considered the same and therefore not available if a comparison of the names reveals no differences or if the only difference between the proposed name and the existing names is one or more of the following conditions:

(1) The use of upper case or lower case letters, distinctive lettering or typeface, or the use of superscript or subscript letters or numerals.

(A) "ACE Woodworks" is the same as "Ace Woodworks".

(B) "H₂O Supplies" is the same as "H₂O Supplies".

(C) "NXNW" is the same as "NxNw".

(2) The addition, substitution, or omission of punctuation marks, accent marks, periods, spaces, or symbols that do not alter the name sufficiently to make the names distinguishable.

(A) "A.F.G. Consulting" is the same as "AFG Consulting".

(B) "Explore!" is the same as "Explore"

(C) "Crossroads Productions" is the same as "Cross Roads Productions".

(D) "Gotham" is distinguishable from "Got Ham".

(3) Except as provided by §79.43 of this subchapter (relating to Alphabet Names), the addition, substitution, or omission of different articles or conjunctions.

(A) "The Truck Stop" is the same as "Truck Stop".

(B) "Fair View, a Rest Home" is the same as "Fairview Rest Home".

(4) The repetition, absence, or difference in letters that does not alter the names sufficiently to make the names distinguishable.

(A) "Texas Strong" is the same as "Texas Strong".

(B) "Going Strong" is the same as "Goin' Strong".

(C) "XX Tires" is distinguishable from "X Tires".

Source Note: The provisions of this §79.39 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.40. Names that are Available with Consent. Without limiting the discretion of the Secretary of State to determine that a proposed name is the same as an existing name, entity names that are not distinguishable are available with consent from an existing entity under one or more of the following conditions:

(1) The existence, addition, substitution, or absence of a word, phrase, or abbreviation that identifies or indicates different types of entities.

(A) "Sampson, Inc." is available with consent from "Sampson, PLLC".

(B) "Adventure Unlimited, a Limited Liability Company" is available with consent from "Adventure Unlimited, LP".

(C) "Love Foundation" is the same as "Love Foundation, Inc."

(D) "ABC, LLC" is the same as "ABC Limited Liability Company"

(E) "Wild West, Inc." is distinguishable from "Wild West Companies, Ltd."

(2) The use of a common abbreviation of the same word.

(A) "Smith Brothers Plumbing" is available with consent from "Smith Bros. Plumbing".

(B) "Steel Manufacturing Supplies" is available with consent from "Steel Mfg Supplies"

(C) "Sweet Treats of Dallas Ft. Worth" is available with consent from "Sweet Treats of DFW".

(D) "United States Enterprises" is available with consent from "U.S.A. Enterprises".

(3) The use of the singular, plural, or possessive form of a word if the difference does not alter the name sufficiently to make the names distinguishable.

(A) "On the Banks" is available with consent from "On the Bank".

(B) "Child's Play" is distinguishable from "Children's Play".

(4) The addition or omission of a state to a name which already includes a city and which does not alter the name sufficiently to make the names distinguishable.

(A) "Resources of Austin, Texas" is available with consent from "Resources of Austin".

(B) "Atlanta Feed Company" is available with consent from "Atlanta, Georgia Feed Co."

(C) "Elite Realty of Athens, TX" is distinguishable from "Elite Realty of Athens, GA"

Source Note: The provisions of this §79.40 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.41. Administrative Review of Documents with Names Requiring Consent.

(a) A proposed name which is deemed to require consent cannot be filed without consent. No waiver of consent will be allowed even under the following conditions:

(1) there is related management or ownership;

(2) the existing entity is not actively engaged in business;

(3) the existing entity is about to change its name, be terminated, forfeited, or merged out of existence.

(b) The consent must accompany the document to which the consent relates at the time of submission.

(c) Upon the simultaneous submission of any filing instruments relating to the formation of two or more related entities, consent for the use of a name requiring consent will be implied. Example: Consent is not required for the simultaneous formation of a Texas limited partnership named ABC Ventures, Ltd. and its general partner, ABC Ventures, LLC.

(d) If a proposed entity name conflicts with more than one entity name, the secretary of state will request that consent be obtained from the entity or name registrant, as applicable, with the longest continuous use of the entity name as determined by the records of the secretary of state.

Source Note: The provisions of this §79.41 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.42. Form of Consent. The consent must be in writing and signed by an officer or authorized agent of the consenting entity. The signature of the person providing consent must be notarized. Consent given orally cannot be accepted. Consent from more than one entity may be required in some instances. Consent must not state conditions; it must give unequivocal consent.

Source Note: The provisions of this §79.42 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.43. Alphabet Names. Where a name or a unit of names consists of initials only or letters of the alphabet, the combination of initials will be considered as one word for the purpose of applying name availability rules.

(1) Example: The following are different "words" and are distinguishable:

(A) A & A;

(B) AA;

(C) AAA;

(D) ABA;

(E) AAB.

(2) Example: A & B Supply is distinguishable when compared to A & B, Inc.

(3) Example: A+A Car Rental, Inc. is the same as A & A Car Rental, Inc. is the same as A and A Car Rental, Inc.

(4) Example: A and B Trucking, Inc. is distinguishable when compared to AB Trucking, LLC.

Source Note: The provisions of this §79.43 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.44. Matters Not Considered. Only the proposed entity name, the current names of active (not

revoked, cancelled, merged, dissolved, withdrawn, terminated, or forfeited) entities, name reservations, and name registrations for entities on file are considered in determining the availability of the entity name for purposes of filing with the secretary of state. Among matters not considered are the following:

- (1) whether the purpose of a proposed entity is the same as or similar to the purpose of an existing entity;
- (2) whether the entities will be carrying out activities in the same or nearby locations;
- (3) whether an analogous situation has previously been acted upon by the Office;
- (4) whether an "opinion" as opposed to a final determination has previously been expressed by an employee of the secretary of state in response to an oral or written request;
- (5) whether an existing entity is actively engaged in business, or has a telephone listing, or a location of a place of business;
- (6) whether an existing entity is about to change its name, or be terminated, or merged out of existence;
- (7) whether a response to an inquiry can be obtained from an existing entity;
- (8) whether the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise taken other actions in the expectation, hope, or belief that the proposed name would be available;
- (9) whether the applicant is more or less important, extensive, widely known, or influential than an existing entity;
- (10) whether a previous determination on the same name was made by an employee of the secretary of state;
- (11) whether an existing entity has filed for or intends to file for bankruptcy; or
- (12) whether an applicant's submission of a document relating to the entity name at issue was prior to the submission of the document effecting the conflicting existing name.

Source Note: The provisions of this §79.44 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.45. Final Determination of Name Availability. An employee of the Office may express an opinion on name availability in response to a written, telephone, or other oral request, but such an opinion is not a final determination that the name will or will not be accepted for filing and stamped filed. A final determination is made only when the document is submitted for filing.

Source Note: The provisions of this §79.45 adopted to be effective June 1, 2018, 43 TexReg 3341.

§79.46. Examples Not Exclusive.

(a) The conditions used in these sections are not meant to be exclusive, nor should they be used to limit the determination of whether a proposed name is distinguishable from the name of an existing entity.

(b) The examples used in these sections are not meant to be exclusive, nor should they be used to limit the determination of whether a proposed name is distinguishable from the name of an existing entity.

Source Note: The provisions of this §79.46 adopted to be effective June 1, 2018, 43 TexReg 3341.