

Missouri Secretary of State, Robin Carnahan

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Frequently Asked Questions

Business Names

1. What is a "fictitious name?"

A **fictitious name** is a name under which any person shall do or transact any business in this state which is other than the true name of such person. A **fictitious name** is commonly referred to as a "DBA," an acronym for "doing business as." Filing a **fictitious name** registration does not afford or secure any exclusive rights to the name.

2. Who has to file a fictitious name registration?

Any person or entity which is doing business under a name other than its true name must register that **fictitious name**. For instance, if John Doe is doing business under the name "John's Lemonade Stand," John Doe must register the **fictitious name** "John's Lemonade Stand." If the corporation known as Missouri Lemonade Manufacturing, Inc., is doing business under the name "Missouri Lemonade," it must register the **fictitious name** "Missouri Lemonade."

3. Why is a corporation or limited liability company using the fictitious name I have registered?

Filing or registering a **fictitious name** for your business does not afford or reserve any exclusive rights to the use of that name. There is no limit to the number of entities which may register the same **fictitious name**.

4. How long does a name reservation last?

A corporate name, or a name for a limited liability company or limited partnership, may be reserved for up to 60 days, and such reservation may be renewed for two additional 60 day periods. After a name has been reserved for 180 days, the name ceases to be in reserved status and the applicant who had the name reserved for the maximum 180 days may not reserve that name again. The applicant whose reservation expired may still use the name as its corporate name if available, and any other entity may place the name back into reserve status.

5. If a name reservation expires, who can use it or reserve it?

After a particular name's reserve status expires, it is available to any party for use as a corporate name, even the party whose reservation expired. The party whose reservation expired, however, may never again place the name in reserved status.

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Registered Agent/Office

1. Who may serve or act as a registered agent?

An agent may be either an individual who is a resident of Missouri and whose business office is identical with the entity's registered office, or it may be a corporation authorized to transact business in Missouri and which has a business office identical with the entity's registered office.

2. What if we don't know anyone in Missouri who can act as our registered agent?

Many service companies and law firms are willing to serve as a **registered agent**. View a listing of

service companies willing to serve as a registered agent.

3. May my entity's registered office address be a PO Box?

A **PO Box** may be listed as a **registered office** address only if a physical street address is also listed. An entity's **registered office** must be a physical location where the registered agent may be served process.

4. May my entity's registered office address be listed as the address of a mailing service company, such as Mailboxes, Etc. or the UPS Store?

No. An entity may not list the address of a retail mailing store, such as Mailboxes, Etc. or the UPS Store, as its **registered office**; the registered agent's business office must be the same as the registered office.

5. May I change my entity's registered agent without the consent of a new agent?

The new **registered agent** must consent to his appointment in writing, and such written consent must accompany the filing of a statement of change of the **registered agent**.

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Corporations

Incorporators

1. Who may serve as an incorporator for a corporation?

A corporation may have one or more **incorporators** who must be a "natural person" and at least 18 years old. The **incorporator** or **incorporators** sign and deliver the articles of incorporation to the Secretary of State.

2. Is the incorporator the owner of the corporation?

Not necessarily. An **incorporator** does not have to be a **shareholder** of the corporation being **incorporated**, nor is the incorporator required to become a **shareholder** in the future.

3. Can I amend the incorporator?

No. An amendment to the articles of incorporation may not change or modify the **incorporator** or the **incorporator's** address; that information is maintained forever and reflects the historical facts concerning who created the entity.

4. Who signs the articles of incorporation?

The **incorporators** sign the articles of incorporation; the **incorporators** do not have to be owners or shareholders.

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Shares/Shareholders

1. How many shares should my corporation issue?

The numbers of authorized **shares** a corporation will have to issue is left to the discretion of the incorporators; 30,000 **shares** are the most that may be authorized for the minimum incorporation fee of \$58. If a corporation discovers that it needs to issue more **shares** of stock than are authorized, it may amend its articles to authorize additional **shares**.

2. What are “classes” of stock?

A corporation may issue its **stock** in one or more **classes**, and each **class** will have distinct characteristics. Some corporations have **preferred stock**, which traditionally means that holders of such **stock** have a preference or priority in respect to dividends over holders of **common stock**. **Classes of stock** enable a corporation to give certain benefits to certain shareholders which are different than those afforded others.

3. Can the Secretary of State tell me who the shareholders are of a corporation?

No. The Secretary of State does not maintain or have the authority to require disclosure of information on the identity or holdings of **shareholders** of any corporation.

4. May a corporation have only one shareholder?

Yes. A **single-shareholder** corporation is permissible under Missouri law.

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General

1. What should I list as my corporation’s duration?

A corporation’s **duration** is by default perpetual, though incorporators may choose a certain number of years for which it is to continue. If a corporation’s **duration** is set to expire after a certain number of years, the Secretary of State may **dissolve** the corporation after the expiration date; upon **dissolution** the corporation may no longer carry on its regular business.

2. What should I list as my corporation’s purpose in the articles of incorporation?

Most corporations list the specific business or activity in which they will engage to make a profit. For instance, a corporation which will make and sell lemonade might list as its **purpose** “to produce, market and sell lemonade.” In addition, many corporations also add a general or catchall **purpose** so that they may expand or alter their activities; such a general **purpose** might state “The corporation is formed to conduct and transact all lawful business activities allowed under the laws of the State of Missouri.” A specific **purpose**, a general **purpose**, or a combination of the two is acceptable.

3. Should I file my corporation’s bylaws, minutes and/or stock certificates with the Secretary of State?

No, the **articles of incorporation** are the only creation document filed with the Secretary of State. **Bylaws**, copies of **minutes** of any meetings, **stock certificates**, **shareholders’ agreements**, and other internal corporate documents are not filed with, and will not be accepted by, the Secretary of State.

4. Can I change the due date for my corporation’s annual report?

No. Missouri law states that an **annual report** is due in the month in which a corporation incorporated or qualified to do business. In the past, corporations were allowed to change their **annual report** due date, but laws passed by the Missouri legislature in 2004 eliminated that option.

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Dissolution

1. What is administrative dissolution?

When a corporation fails to timely file an **annual report**, fails to maintain a **registered agent**, its

duration expires or in several other situations, the Secretary of State may **administratively dissolve** that corporation. The Secretary's authority to do so is granted by statute, and upon **dissolution**, a corporation may no longer carry on its business other than to wind up, liquidate and pay off its creditors. A corporation may apply to have an **administrative dissolution rescinded**, and become reinstated, by requesting a "**rescission packet**" from the Secretary of State and complying with the requirements set forth in the packet.

2. Can an administrative dissolution be repealed or undone?

Yes. A corporation can have an **administrative dissolution rescinded**, and become **reinstated**, by filing an application, submitting a tax clearance letter and paying fees and penalties. You may place an order to have **reinstatement** forms mailed to you. The request needs to include the name of the corporation, its charter number and a return address. If you want the forms express mailed back to you, you must include your express mail account number, a telephone number and a physical address. You can e-mail a request to rescissions@sos.mo.gov; fax a request to (573) 751-5841; or mail a request to Corporations Division, PO Box 778, Jefferson City, MO 65102.

3. Do I need a tax clearance letter to be reinstated after an administrative dissolution, and where do I get one?

Yes. A tax clearance letter from the Department of Revenue is required to be submitted to the Secretary of State in order to be **reinstated after administrative dissolution**. The tax clearance letter from the Department of Revenue must state that the corporation has no taxes due and owing. To obtain a **tax clearance letter**, you should complete a Department of Revenue Form 943 **Request for Tax Clearance Letter** and submit it to the Department of Revenue as indicated on the form. An application for **reinstatement** should not be submitted to the Secretary of State unless it is accompanied by a valid **tax clearance letter**.

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Close Corporations

1. What is a close corporation?

A statutory **close corporation** is characterized by its traditionally small size, its consolidated management structure, and the statutory restrictions on the transfer of its shares. There are approximately 6,000 **close corporations** currently existing in Missouri. A statutory **close corporation's** shareholders generally may not transfer their shares of stock without allowing the corporation's other shareholders a right of first refusal and the corporation may operate without a board of directors and in some instances without bylaws. The **close corporation** election is made in the entity's articles of incorporation.

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Professional Corporations

1. What is a professional corporation?

A **professional corporation** is organized to carry out one or more professional services, and the shareholders of the **professional corporation** must be licensed or authorized to practice a certain profession, which includes accountants, architects, engineers, attorneys, dentists, physicians, veterinarians, real estate salespeople and registered nurses. The articles of incorporation filed to form a **professional corporation** must be accompanied by a **certificate of the licensing authority** of the subject profession. **Professional corporations** are managed in a manner similar to general corporations, though all directors and officers of a **professional corporation**, other than the secretary, must be qualified persons with respect to the underlying profession of the entity. The shares of a **professional corporation** may only be owned by similarly qualified persons, or by partnerships, other **professional corporations** or **limited liability companies**, which are wholly

owned by other licensed individuals.

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Nonprofit Corporations

1. Do nonprofit corporations have shareholders?

No. Nonprofit corporations do not have shareholders. No one “owns” a **nonprofit corporation** and the law prohibits distributions of the **nonprofit corporation’s** assets or income to individuals.

2. What are “members” of a nonprofit corporation?

A **nonprofit corporation** may, but is not required to, have **members**. “**Member**,” as defined by law, means any person who has the right to vote upon the election of directors of a **nonprofit corporation**. If a **nonprofit corporation** is to have **members** such feature must be mentioned in the corporation’s bylaws or articles. **Members** do not personally own the **nonprofit corporation** or have a financial stake therein, and the corporation’s income cannot be distributed to the **members**.

3. What is a distribution clause in a nonprofit corporation’s articles of incorporation?

A **distribution clause** is the section in nonprofit articles of incorporation that describes how the corporation’s assets will be distributed upon **dissolution**. A **nonprofit corporation** will often identify another **nonprofit corporation** as the recipient of its assets upon **dissolution**.

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Limited Liability Companies

1. What should I list as my company’s “purpose” in the articles of organization?

You may list a specific **purpose** directly related to your company’s business or endeavor, and you may supplement that with, or solely state, that the company’s business is to transact any or all lawful business for which a limited liability company may be organized under the laws of the State of Missouri.

2. Should my limited liability company be managed by a manager or a member?

All limited liability companies must indicate in their articles of organization whether the entity will be **manager-managed** or **member-managed**. This election determines who will **manage** the affairs of the company, and who will have the authority to bind the company. If a limited liability company is to be **member-managed**, each **member** has the authority to be involved in **management**, and to bind the company. The company’s **operating agreement** may restrict or place conditions on such **management** in any manner the **members** desire. If a limited liability company is **manager-managed**, the authority to **manage** the company and create obligations for it is vested in one or more **managers**, who are appointed by the **members** or designated in the **operating agreement**.

3. Must a manager be a member?

No. Missouri law does not require a **manager** to also be a **member** of the limited liability company.

4. What should I state as the duration of my limited liability company?

A limited liability company may exist as long as the **organizers** desire, and may exist perpetually. The **organizers** may determine to limit a limited liability company’s existence by providing for its **dissolution** upon a certain date or after a certain number of years. The **organizers** may also determine to provide for a limited liability company’s **dissolution** upon the occurrence of a certain event.

5. Who can be an organizer?

Any person, whether or not they are or will be a **member** or **manager**, may serve as an **organizer** and sign and file articles of organization with the Secretary of State.

6. Should I file my limited liability company's operating agreement with the Secretary of State?

No. The articles of organization document is the only creation document filed with the Secretary of State, and the Secretary of State will not accept an **operating agreement** for filing.

7. Do limited liability companies have to file an annual report?

No.

8. Who may sign amendments or other documents filed with the Secretary of State after a limited liability company is organized?

Limited liability company documents filed with Secretary of State are generally to be **signed** by an "**authorized person**," which is the **manager** of the limited liability company or, if **member-managed**, by a **member**.

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Partnerships

General

1. What is the difference between a limited partnership, a limited liability partnership, and a limited liability limited partnership?

A limited partnership is a statutory entity created by filing a certificate of limited partnership with the Secretary of State; a limited partnership must have at least one **general partner** and at least one **limited partner**. A **general partner** is liable for the obligations of the limited partnership, while the **limited partner** has no personal liability for the same.

A limited liability partnership is a general partnership that elects limited liability partnership status by filing an application for limited liability partnership registration. Upon securing such registration, all partners in the limited partnership, though they remain **general partners**, are afforded the same liability protection enjoyed by **limited partners** in limited partnerships. Other than this limited liability component, a limited liability partnership maintains all the other characteristics of a general partnership.

A limited liability limited partnership (LLLP) is a limited partnership that elects limited liability limited partnership status by filing an application for LLLP registration. Upon securing such registration, all partners in the limited partnership, including the **general partners**, are afforded personal liability protection. Other than the limited liability component, an LLLP maintains all other characteristics of a limited partnership.

2. Are partnerships required to file annual reports with the Secretary of State?

No, though certain types of partnerships may be required to complete certain types of annual filings or renewals with the Secretary of State. General partnerships do not file any documents whatsoever with the Secretary of State, and limited partnerships are not required to make an annual filing. Registration as a limited liability partnership or an LLLP is only valid for one year, but such registration may be renewed on a yearly basis by filing a renewal form with the Secretary of State.

3. What is the difference between a general partner and a limited partner?

A **general partner**, who is usually charged with operation and day-to-day management of the

partnership's affairs and business, takes on personal liability for the obligations and debts of the partnership and the actions of the other partners. A **limited partner** is shielded from such liability and traditionally is not as involved in the day-to-day affairs of the limited partnership. Until recently a **limited partner's** shield from liability was threatened or removed if the **limited partner** became involved in the management or operation of the limited partnership, but in 1997 changes to the laws regulating limited partnerships allowed a **limited partner** to participate in limited partnership management without risking liability for the limited partnership's obligations.

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Limited Partnerships

1. Who signs amendments to the certificate of limited partnership?

Amendments must be signed by at least one existing **general partner** and all new **general partners** identified in the amendment as new **general partners**.

2. Do limited partnerships file annual reports?

No.

3. Can the Secretary of State cancel, dissolve, or terminate a limited partnership?

The Secretary of State can **cancel** an existing limited partnership certificate, or **reject** or disapprove a certificate, if a limited partnership fails to maintain a **registered agent**, fails to pay required **filing fees**, or engages in certain prohibited activities related to fraud or deception.

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Limited Liability Partnerships

1. Who signs a partnership's application (or reapplication) for registration as a limited liability partnership?

The application (and reapplication) should be **signed** by a majority of the partners or by one or more partners authorized to **sign** the application on behalf of the partnership. If the application is **signed** by an authorized partner or partners, no evidence of such authority needs to be filed or provided to the Secretary of State.

2. What fees do I pay to register as a limited liability partnership?

The registration **fee** for a limited liability partnership is \$25 for each partner in the partnership, with the total fee not to exceed \$100.

3. What fees do I pay to renew limited liability partnership registration?

The **renewal fee** for a limited liability partnership is \$100 plus, if the **renewal** increases the number of partners, \$50 for each partner added, with the renewal fee not to exceed \$200.

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Online Filings

1. Why should I file documents online?

Businesses save time and money by filing online. Filing a corporate annual report online saves the corporation \$25, and can be completed in a matter of minutes. Filing online eliminates postage, mailing, and delivery service costs.

2. How do I pay for online filings?

All fees associated with online filings or registrations must be paid with a **credit card**. The Secretary of State's office accepts Master Card, Visa, American Express and Discover.

3. Do I have to have an e-mail address to file online?

Yes. All online filers must have an **e-mail address**. An e-mail address is required by the credit card processor.

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Foreign Entities

1. What qualifies as "transacting business" or "doing business"?

Under Missouri law, whether an entity is **transacting or doing business** in the state is determined on a case-by-case basis. There is no statutory standard or bright-line rule to apply to determine if an entity must register. Many entities enlist the assistance of any attorney to make a determination as to the entity's obligation to register; this analysis is often based upon past court decisions.

2. Does a single or isolated project or task in Missouri qualify as "doing business"?

Missouri statute specifically provides that an isolated transaction or project that is completed within 30 days, and is not one in the course of repeated transactions of a like nature, does not qualify as "**doing business**". In this situation, the foreign entity is not under the obligation to register with the Secretary of State.

3. Does collecting debts qualify as "doing business"?

No. Missouri statute specifically provides that securing and collecting debts, and enforcing mortgages and security interests, do not qualify as doing business.

4. What if I am obligated to, but do not, register my foreign entity?

An entity that is not registered, but by law is required to be, cannot legally transact business or maintain a lawsuit in Missouri until it secures a certificate of authority. If the failure to properly register is discovered after an action is initiated by an unregistered foreign entity, the action could be suspended until the registration is completed. In addition, foreign entities that do not comply with the registration requirement are subject to a fine of not less than \$1,000, which is collected through the institution of a lawsuit.

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General Questions

1. What is the "technology fee"?

The **technology fee** is a five dollar charge added to the regular filing fee collected for filings by the Secretary of State. By law, the **technology fee** is deposited into the state treasury and is credited to the Secretary of State's technology trust fund account.

2. Does the Secretary of State regulate banks?

No. Banking and financial institutions are regulated by the **Division of Finance**. Articles of incorporation and other filings for banking and financial institution entities are filed with the **Division of Finance**.

3. Does the Secretary of State regulate insurance companies?

No. Insurance companies are regulated by the **Department of Insurance**. Articles of incorporation and other filings for insurance companies are filed with the Department of **Insurance**.

5. Where do I get a business license?

Many municipalities and/or counties require that businesses obtain a **business license** before opening a business in their city or county; a business license is not the same as a **certificate of incorporation** or **certificate of organization** issued by the Secretary of State. **Business licenses** are obtained directly from the local governmental authority; the Secretary of State does not issue business licenses.

6. What is the physical mailing address for over-night packages?

Overnight packages should be addressed to 600 West Main, Jefferson City, MO 65101.

7. What is the "effective date" of my filing?

By statute, it is the day of the Secretary of State's endorsement on the original document. In most cases, this is the date the document is received and initially reviewed by the Secretary of State.

8. Where do I get my tax ID number?

The Internal Revenue Service issues **Federal Employer Identification Numbers (FEIN)**, sometimes called a **tax ID number**. An FEIN application, known as an SS-4, may be completed online at the IRS website. A **state taxpayer identification number** is issued by the Missouri Department of Revenue. That number can be obtained online at <https://dors.mo.gov/tax/coreg/index.jsp>.

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