

# DOING BUSINESS IN TEXAS

By

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### **I. INTRODUCTION - A SUMMARY<sup>1</sup>**

What must a company do in order to conduct business legally in the state of Texas? There are numerous considerations including:

- A. Business Registrations
- B. Business Tax Responsibilities
- C. Business Licenses and Permits
- D. Business Employer Requirements and Considerations

### **II. BUSINESS REGISTRATIONS**

#### A. State Requirements and Considerations: Texas Secretary of State Filings

(1) The Secretary of State's website is <http://www.sos.state.tx.us/> and the website for the Corporations Section is <http://www.sos.state.tx.us/corp/index.shtml>

(2) In general, the following types of business entities (domestic or foreign) must be registered with the Texas Secretary of State:

- Corporation
- Limited Liability Company
- Limited Partnership
- Registered Limited Liability Partnership
  
- **NOTE** → Basically, any business entity that affords limited liability to any owner or member must register.

**\*\*This summary is a general discussion which does not represent legal advice and should not be relied upon as legal advice. Nor should this summary be viewed as necessarily complete and comprehensive. Every effort has been made to ensure that the information contained herein is accurate, but no guaranty is made as to its accuracy.**

(3) Domestic Entities (business entities formed in Texas)

- To form a Texas entity, a **Certificate of Formation** must be filed with the Texas Secretary of State (also, the “SOS”).
  - **NOTE** → Sample forms for the documents discussed within this outline may be found attached to this outline (these forms have been taken from the Secretary of State’s website and may also be found at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml)).<sup>2</sup>
  - Although the attached forms are only representative of the forms required for a corporation, forms for the other types of entities may be found on the above-referenced website.
- For a corporation, information requested includes (but is not limited to):
  - **Entity name** → The name may not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign entity, or any name reservation or registration filed with the SOS.
  - **Registered agent and registered office** → The corporation may not act as its own registered agent; the registered agent may be either a domestic entity or a foreign entity that is registered to do business in Texas or an individual resident of the state.
    - ❖ **TIP** → Although the company may list its principal office as the registered office (provided that it is in Texas and that an individual at that address is listed as the registered agent), it may be beneficial to use a company that provides registered agent services, such as CT Corporation, so that you may choose which city your registered agent and office will be located in. This is relevant because the county where the registered agent is located may determine venue in a lawsuit, and some counties are more plaintiff friendly than others. Litigation risks of different counties should be evaluated when selecting a county for the location of the registered agent and registered office.
  - **Directors** → A minimum of one director is required, but there is no residency requirement.
    - ❖ **TIP** → Documents on file with the Secretary of State are public records. If privacy is a concern, when providing

address information for directors or other governing persons, use a business or post office box address.

(4) Foreign Entities (these are business entities that have been formed outside the state of Texas)

- To transact business in Texas, a foreign entity must register with the Texas Secretary of State. Failure to do so may have negative consequences, including the imposition of late fees and penalties.
- A foreign entity is defined as any business entity that has not been formed in the State of Texas.
- To register a foreign entity, an **Application for Registration** must be filed with the Texas Secretary of State.
  - **NOTE** → After submitting an Application for Registration to the Secretary of State, the Texas Comptroller of Public Accounts will probably send a **Nexus Questionnaire** that will need to be completed and submitted so that the Comptroller may determine if franchise taxes are or will be due.
- For a corporation, information requested on the Application for Registration includes (but is not limited to):
  - **Entity name and type** → The full legal name of the foreign entity as stated in the entity's formation document must be listed.
    - ❖ **NOTE** → The entity name: (1) must contain a recognized term of organization for the entity type (for example, "Inc." for a corporation); (2) may not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (for example, "Bank"); and (3) may not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the SOS.
    - ❖ If the entity name does not comply with the above requirements, the document cannot be filed.
    - ❖ **TIP** → The Secretary of State will provide a preliminary determination on name availability; call (512) 463-5555 or email [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us); this preliminary determination should be obtained *prior to* filing any documents, as filing fees will not be returned.

- **Assumed Name** → If the foreign entity’s name does not contain an appropriate organizational designation for the entity type or if it has been determined that the entity’s legal name is not available for use due to a conflict with a previously existing name, this section must be completed.
  - ❖ **NOTE** → Acceptable organizational designations for a foreign for-profit corporation include “Corporation”, “Incorporated”, “Company”, or an abbreviation of those terms.
  - ❖ **TIP** → If the foreign entity’s name is not available, an assumed name under which it will conduct business must be chosen and an assumed name certificate must be filed in the Secretary of State’s office **and** in the appropriate county clerk office(s) (see Section II(A)(4) below).
- **Federal Employer Identification Number** → If the foreign entity does not have yet a FEIN, see below for how to obtain one.
- **Jurisdictional information** → This is the foreign entity’s jurisdiction of formation and the date of formation.
- **Beginning date of business** → This is the date that the foreign entity began or will begin to transact business in Texas.

#### (5) Assumed Name Certificate

- If it has been determined that the entity’s legal name is not available for use due to a conflict with a previously existing name, or if the foreign entity is going to conduct business using any name other than its legal name, an assumed name certificate must be filed with the Texas Secretary of State (and as discussed below, with the appropriate county clerk’s office).
- See Secretary of State Form 503, attached to this outline (this form may not be used for filings with the county clerk).

### B. Harris County Requirements and Considerations

#### (1) Assumed Name Certificate

- In addition to filing an assumed name certificate with the Secretary of State, an assumed name certificate must be filed in the county clerk’s office of the county in which the registered office is located and the

county in which its principal office is located (if not the same as the registered office).

- Each county clerk's office will have a different form to submit.
- A copy of the form to be filed in Harris County is attached to this outline or may be found at:
  - <http://www.cclerk.hctx.net/PersonalRec/assumnamDF.htm>
- To obtain the form for other counties, you may visit the county clerk's website or call the county clerk's office.

(2) To obtain more information related to Harris County in general, visit the official Harris County, Texas website at [http://www.hctx.net/online\\_services.asp](http://www.hctx.net/online_services.asp)

### **III. BUSINESS TAX REGISTRATIONS**

#### **A. Federal**

##### **(1) Federal Income Tax and Excise Taxes**

- Every business must file an annual return with the Internal Revenue Service (IRS) and excise taxes are collected from manufacturers and sellers of certain products.
- Visit [www.irs.gov](http://www.irs.gov) for more information or call 1-800-829-4933, the business taxpayer hotline.
- One may also contact one of the four Houston IRS local offices. The contact information for the downtown location is:
  - 1919 Smith St.  
Houston, TX 77002  
(281) 721-7021

##### **(2) Employment Taxes**

- For information related to employment taxes, visit:  
<http://www.irs.gov/businesses/small/content/0,,id=98942,00.html>

##### **(3) Federal Employer Identification Number (FEIN) or Taxpayer Identification Number (TIN)**

- Every business must have a FEIN, which should appear on all federal business tax returns, and must be submitted to the Texas Secretary of State for foreign entities.
- For information related to how to apply for a FEIN, visit:  
<http://www.irs.gov/businesses/small/article/0,,id=97860,00.html>
- To apply for a FEIN online, visit:  
<https://sa1.www4.irs.gov/modiein/individual/index.jsp>

## B. Texas

### (1) Business Taxes

- The Texas Comptroller of Public Accounts is charged with the administration and collection of state and local sales tax from businesses operating in Texas and also collects franchise taxes owed by certain Texas business entities.
  - **NOTE** → In addition to paying taxes, a **Public Information Report** must be submitted annually with the Comptroller in order to maintain good status in the state.
- The Comptroller's website is <http://www.window.state.tx.us/> and the Customer Service tax helpline is **1-877-662-8375**. For franchise tax help, call **1-800-252-1381**.
- For more information related to business taxes in general, visit:  
<http://www.window.state.tx.us/taxes/>
- Also, see **Tax Publication 98-806**, attached to this outline, for general information related to the Texas franchise tax.

### (2) Employment Taxes

- The Texas Workforce Commission collects all unemployment taxes for workers employed in Texas.
- The Business and Employers homepage is located at:  
<http://www.twc.state.tx.us/customers/bemp/bemp.html>
- One may also call **1-800-832-9394**.

C. Harris County

(1) Personal Property

- If the business owns tangible personal property that is used to produce income, the property must be reported on a rendition form to the local county appraisal district.
- If the business is located in Harris County, for more information, visit [www.hcad.org](http://www.hcad.org) or call (713) 957-7800.

(2) Real Property

- If the business owns real property, real property taxes will also be owed. Again, if the property is located in Harris County, visit [www.hcad.org](http://www.hcad.org) or call (713) 957-7800.
- Be aware that there are legal steps that may be taken to challenge a taxing authority's appraisal. Please contact us for further information.

**IV. BUSINESS LICENSES AND PERMITS**

A. Texas

(1) The TexasOnline website provides information related to required licenses, permits, and registrations. Visit:

- <http://www.texasonline.com/category.jsp?language=eng&categoryId=9>
- One may search the A-Z alphabetical directory or may search by category (for example, "Environment and Natural Resources").

(2) The following website also allows one to search over 300+ specific business types followed by a listing of state agencies that require licenses, permits, certifications, registrations, and/or authorizations to operate a business:

- <http://www.governor.state.tx.us/divisions/ecodev/sba/files/permits.pdf>

B. Harris County

(1) Harris County Permits and Regulations

- To obtain more information related to permits and/or regulations in Harris County, see the following website:

➤ <http://www.eng.hctx.net/permits/> (Permits Group of the Public Infrastructure - Architecture and Engineering Division)

- One may also contact the Permits Group of the Public Infrastructure – Architecture and Engineering Division at **713-956-3000**.

## **V. BUSINESS EMPLOYER REQUIREMENTS AND CONSIDERATIONS**

### **A. Federal**

#### **(1) Americans with Disabilities Act - Contacts**

- **U.S. Equal Employment Opportunity Commission**

1801 L Street N W  
Washington, D.C. 20507  
1-800-669-4000

<http://www.eeoc.gov/>

- For technical assistance on the ADA standards for accessible design and other ADA provisions applying to businesses, nonprofit agencies, and state and local government services, contact:

**Office on the Americans with Disabilities Act: Civil Rights Division**

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights Section - NYA  
Washington, D.C. 20530  
1-800-514-0301

<http://www.usdoj.gov/crt/ada/adahom1.htm>

- For information regarding the ADA requirements for accessible design in new construction and alterations, contact:

**U.S. Access Board**

1331 F Street, NW, Suite 1000  
Washington, DC 20004  
1-800-872-2253

<http://www.access-board.gov/>

- For information regarding the ADA requirements for transportation, contact:

**U.S. Department of Transportation- Federal Transit Administration**

1200 New Jersey Ave. SE

4th & 5th Floors - East Building  
Washington, DC 20590  
[http://www.fta.dot.gov/civilrights/civil\\_rights\\_2360.html](http://www.fta.dot.gov/civilrights/civil_rights_2360.html)

(2) Equal Employment

- Federal law prohibits discrimination on the basis of race, color, sex, religion, disability, age, or national origin, and all employers with 15 or more employees engaged in an industry affecting commerce are prohibited from denying equal opportunity opportunities.
- For more information regarding equal employment requirements, contact:

**U.S. Equal Employment Opportunity Commission**  
1801 L Street, N.W.  
Washington, D.C. 20507  
1-800-669-4000  
<http://www.eeoc.gov/>

(3) Safety

- Federal occupational safety guidelines are administered by the Occupational Safety and Health Administration.
- For information regarding federal occupational safety requirements, contact:

**Occupational Safety and Health Administration (OSHA)**  
[DOMESTIC ONLY]  
U.S. Department of Labor  
Occupational Safety & Health Administration  
200 Constitution Avenue  
Washington, D.C. 20210  
1-800-321-6742  
[http://www.osha.gov/dcsp/compliance\\_assistance/index.html](http://www.osha.gov/dcsp/compliance_assistance/index.html) (for compliance assistance)

(4) Wage and Labor

- For information on federal minimum wage laws, overtime, and other questions regarding wage and labor requirements, contact:

**U.S. Department of Labor**  
200 Constitution Ave., NW  
Washington, DC 20210  
1-866-487-2365

<http://www.dol.gov/>

(5) Immigration

- For immigration related question and issues, contact:

**U.S. Department of Homeland Security**

245 Murray Lane, SW

Washington, D.C. 20528

1-202-282-8000

1-800-375-5283 (US Citizenship and Immigration Services National Customer Service Center)

<http://www.dhs.gov>

**U.S. Customs and Border Protection**

<http://www.cbp.gov>

B. Texas

(1) Americans with Disabilities Act

- For information and technical assistance on the Americans with Disabilities Act, state disability policy information, disability statistics, and local disability resources, contact:

**Texas Governor's Committee on People With Disabilities**

P.O. Box 12428

Austin, Texas 78711

1-512-463-5739

<http://www.governor.state.tx.us/divisions/disabilities/>

- The Texas Department of Licensing and Regulation reviews construction documents for the construction or substantial renovation, modification, or alteration of buildings or facilities defined as public or commercial accommodations for architectural barriers. This review is mandated through the Americans with Disabilities Act. For additional information on architectural barriers, contact:

**Texas Department of Licensing and Regulation**

P.O. Box 12157

Austin, Texas 78711

1-512-463-6599 or 1-800-803-9202

<http://www.license.state.tx.us/ab/ab.htm>

(2) Equal Employment

- For information related to state equal employment requirements, contact:

**Texas Workforce Commission, Civil Rights and Discrimination**

1117 Trinity St., Room 144T

Austin, Texas 78778

1-512-463-2642 or 1-888-452-4778

<http://www.twc.state.tx.us/customers/rpm/rpmsubcrd.html>

(3) Safety

- The Occupational Safety and Health Consultation (OSHCON) program is a free, non-regulatory service available to small, private Texas employers through the Texas Department of Insurance, Division of Workers' Compensation.
- A company is eligible for OSHCON assistance if it:
  - does business in the state of Texas;
  - is in private industry; and
  - has less than 250 employees at the consultation site and no more than 500 employees at all sites controlled by the employer (limited assistance may be available for larger employers).
- The focus of the program is on employers in high hazard industries, but assistance is available to all businesses that meet the above criteria because hazards may be present in any workplace. You must request a consultation from OSHCON to initiate assistance.
- To request an OSHCON consultation, call **1-800-687-7080** or contact your local consultant:

Texas Department of Insurance, Division of Workers' Compensation  
OSHCON Program

In Houston:

**Houston East**

Maurice Chance

Bill Irvin

5425 Polk Street, Suite 130, MS-207

Houston, TX 77023-1423

713-924-2200, ext. 701 or 702

**Houston West**

Danny Milton  
507 N. Sam Houston Pkwy East, Suite 600  
Houston, TX 77060  
281-260-3035 x702

- Or, visit their webpage at  
<http://www.tdi.state.tx.us/wc/services/oshcon.html>

(4) Wage and Labor

- The Labor Law Section of the Texas Workforce Commission is charged with the enforcement of the following statutes: the Texas Payday Law, and the Texas Child Labor Law. The Section also disseminates information on the Texas Minimum Wage Act.
- For more information regarding these programs, contact:

**Texas Workforce Commission**

**Labor Law Section**

101 E. 15th St., Rm. 124T  
Austin, TX 78778  
1-512-475-2670

<http://www.twc.state.tx.us/ui/lablaw/lablaw.html>

(5) Workers Compensation Insurance

- For information related to workers compensation insurance in Texas, contact:

Texas Department of Insurance  
Division of Workers' Compensation  
1-800-252-7031 (Customer Service)  
<http://www.tdi.state.tx.us/wc/indexwc.html>

In Houston:

**Houston East**

Elias Ramirez Building  
5425 Polk Street, Suite 130  
Houston, TX 77023-1423  
713-924-2200

**Houston West**

507 North Sam Houston Parkway East, Suite 600

Houston, TX 77060

281-260-3035

(6) New Hire Program

- New Hire Reporting is mandated by federal law under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and requires employers to report new hires and rehires within 20 calendar days. Information received from employers is entered into a statewide registry and then transmitted to the National Directory of New Hires.
- For more information, contact:

**Texas Employer New Hire Reporting**

**Operations Center**

P.O. Box 149224

Austin, Texas 78714

1-800-850-6442

<https://portal.cs.oag.state.tx.us/wps/portal/employer> (click on “New Hires”)

C. Federal and State Labor Posters

(1) Various federal and state laws require employers to display several posters at the workplace. Often, these posters are available, free of charge, from the government agency.

(2) On its website, the Texas Workforce Commission lists the required posters and the contact information for the applicable agency.

- See <http://www.twc.state.tx.us/ui/lablaw/posters.html>

**VI. OTHER RESOURCES**

A. Business and Service Orientated Organizations → Houston has a wide variety of organizations that are business and service oriented, including:

- (1) Canadian Consulate; <http://geo.international.gc.ca/can-am/houston/>;  
713-821-1441
- (2) Greater Houston Partnership; <http://www.houston.org/>
- (3) Houston West Chamber of Commerce; <http://www.hwcoc.org/>

(4) Houston East End Chamber of Commerce;  
<http://www.eecoc.org/custom2.asp?pageid=228>

(5) East Harris County Manufacturers Association; [www.ehcma.com](http://www.ehcma.com)

(6) Kiwanis Club of Houston; <http://www.kiwanishouston.org/>

B. Rice University Alliance for Technology and Entrepreneurship

(1) For more information, see <http://www.alliance.rice.edu>

(2) To contact the Rice Alliance, call 713-348-3443

C. University of Houston Small Business Development Center

(1) For more information, see <http://www.sbdc.uh.edu/sbdc/Default.asp>

(2) The University of Houston Small Business Development Center Network has a very informative booklet titled “Texas Roadmap to Starting a Business” that may be viewed at <http://sbdcnetwork.uh.edu/sbdc-tx%20rd.pdf>

**VII. THE PORT OF HOUSTON**

Houston has one of the largest ports in the United States. The Port of Houston is ranked first in the United States in foreign waterborne tonnage, second in the U.S. in total tonnage, and tenth in the world in total tonnage. Please visit <http://www.portofhouston.com/> for more information. The Port of Houston is very responsive to inquiries, and we may be able to assist in this regard, as well.

**VIII. LITIGATION AND LEGAL CONSIDERATIONS**

A. Jurisdiction

B. Venue

- Tex. Civ. Prac. & Rem. Code Ann. § 15.001 et seq. (Vernon 2005)

C. Manufacturer’s Statute of Repose

- Tex. Civ. Prac. & Rem. Code Ann. § 16.012 (Vernon 2005)

D. Oil and Gas Provisions

- Injunctions → Tex. Civ. Prac. & Rem. Code Ann. § 65.012 (Vernon 2005)
- Joint Operating Agreements → Tex. Civ. Prac. & Rem. Code Ann. § 127.002 (Vernon 2005)
- Conservation of Oil and Gas → Tex. Nat. Res. Code Ann. § 85.001 et seq. (Vernon 2005)
- Liens against Mineral Property → Tex. Prop. Code Ann. § 56.001 et seq. (Vernon 2005)
- Indemnity in Mineral Agreements → Tex. Civ. Prac. & Rem. Code Ann. Chapter 127 (Vernon 2005)

E. “Ethyl” Indemnity Issues

F. Indemnification in Certain Construction Contracts

- Tex. Civ. Prac. & Rem. Code Ann. Chapter 130 (Vernon 2005)

G. Attorneys Fees

- Tex. Civ. Prac. & Rem. Code Ann. §§ 38.001-38.006 (Vernon 2005)

H. Texas Tort Reform (not exclusive)

- Tex. Civ. Prac. & Rem. Code Ann. Chapter 26 (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. Chapter 33 (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. Chapter 41 (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. Chapter 74 (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. Chapter 82 (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. Chapter 95 (Vernon 2005)

I. Texas Deceptive Trade Practices Act (DTPA)

- Tex. Bus. & Commerce Code Ann. §§ 17.01-17.885 (Vernon 2005)

J. Arbitration/Mediation

- Tex. Civ. Prac. & Rem. Code Ann. § 154.001 et seq. (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. § 171.001 et seq. (Vernon 2005)
- Tex. Civ. Prac. & Rem. Code Ann. § 172.001 et seq. (Vernon 2005)

K. Employment At Will (many exceptions)

L. Repercussions of Non-registration → Failure to be a duly registered business entity may result in forfeiture of a company's right to defend or prosecute a lawsuit.

- Tex. Bus. Org. Code § 9.051 (Vernon 2005)

M. Workers Compensation (consequences of failure to provide)

N. Products Liability

- Tex. Civ. Prac. & Rem. Code Ann. § 82.001 et seq. (Vernon 2005)

## IX. CONCLUSION

Should you require assistance with any of these matters, please feel free to call upon us. The attorneys of Gordon, Arata, McCollam, Duplantis & Eagan, LLP practice in a variety of areas, including:

Admiralty and Maritime	Corporate & Securities Litigation	Oil, Gas and Energy Litigation
Antitrust and Trade Regulation	Corporate & Securities Transactions	Oil, Gas and Energy Transactions
Appellate	Employment and Labor	Products Liability
Arbitration and Mediation	Environmental and Toxic Torts	Public Utilities
Banking	Healthcare	Real Estate and Financing
Bankruptcy / Debtor-Creditor	Insurance	Telecommunications
Class Actions	Oil and Gas Regulatory Practice	Trusts, Estates and Taxation
Commercial Litigation		
Construction		

<sup>1</sup> Much of this information is from the Office of the Governor Economic Development and Tourism website; <http://www.governor.state.tx.us/divisions/ecodev/sba/guide>; permission to reproduce from this website for noncommercial purposes is freely granted.

<sup>2</sup> Although these forms meet the minimal statutory filing requirements pursuant to Texas law, there are provided solely for informational purposes and are not substitutes for the advice and services of an attorney and/or tax specialist. It is recommended that you consult with an attorney licensed by the State of Texas prior to filing any documentation with the Secretary of State.