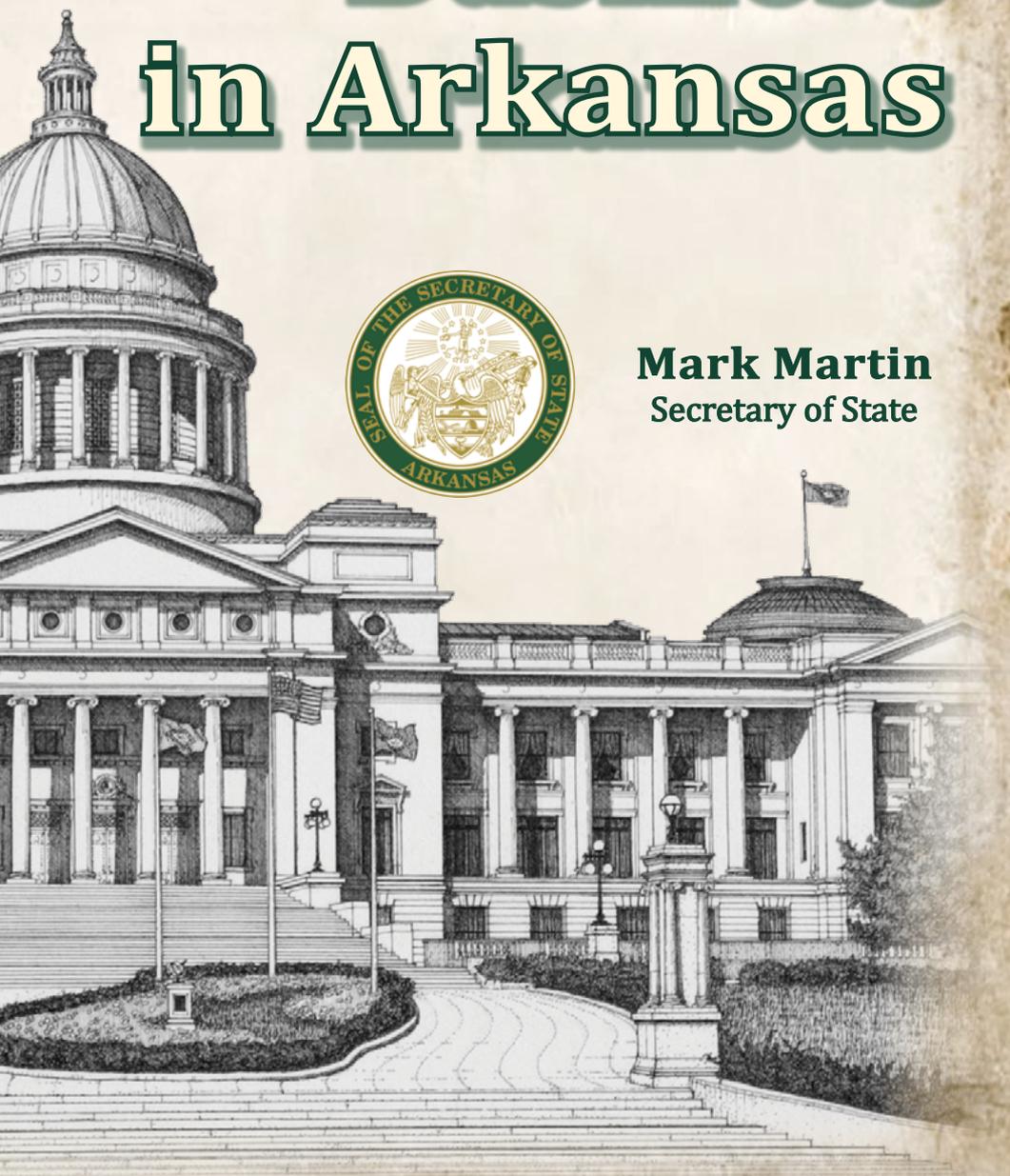


Doing Business in Arkansas



Mark Martin
Secretary of State



ARKANSAS SECRETARY OF STATE MARK MARTIN

Dear Business Owner:

I am pleased to introduce Doing Business in Arkansas, which provides information for our clients interested in filing a corporate or business organization in Arkansas.

The handbook explores issues including:

- Choosing an entity type
- Reserving and filing a corporate name
- Avoiding common problems with document filings
- Corporate fee schedule
- Domestic corporations
- Foreign corporations
- Trademarks and Service Marks

We also provide contact information for other agencies which might be of assistance in establishing or expanding your business.

If you need additional information or have questions, please contact the Arkansas Secretary of State Business and Commercial Services Division at 501-682-3409, 1-888-233-0325 or e-mail corprequest@sos.arkansas.gov.

Sincerely,

A handwritten signature in black ink that reads "Mark Martin".

Mark Martin
Secretary of State

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BUSINESS SERVICES OFFICE

Persons desiring to organize a corporation in Arkansas must apply to the Arkansas Secretary of State for authority to conduct business or other activities as a corporation. Through the Business and Commercial Services Division, the Secretary of State approves various kinds of corporate transactions and issues certificates giving effect to these transactions. The terms “corporation” and “corporate” are here used in a general sense and encompass all business organizations regulated by the state of Arkansas, including LLC, LP, LLP and some associations and cooperatives.

The Business and Commercial Services Division also retains the records of almost 140,000 active corporations organized or authorized to conduct business in Arkansas. All records maintained in this office are subject to the Freedom of Information Act (except for some franchise tax information). These files are public and may be inspected or copied upon request for a fee. (Fees are listed on the Filing Fee Schedule at www.sos.arkansas.gov/BCS/.)

A. Hours and Telephone Numbers

The Business and Commercial Services Division is open from 8 a.m. to 5 p.m., Monday through Friday and can be reached by phone at 888-233-0325 or 501-682-3409. Documents may be filed online at www.sos.arkansas.gov/BCS/. Online filings are updated within 48 hours and originals are returned by mail to the submitter. Documents may also be submitted by mail. If approved, mailed documents will normally be filed and returned within 24 to 72 hours after the Business and Commercial Services Division receives them. You may also file by bringing documents directly to our office, and if approved, they will be processed while you wait. Any document received after 4:30 p.m. will be available for pick-up the next business day. To avoid delays caused by return of defective documents, please see the Checklist for Document Filings, page 10.

B. Services of the Business and Commercial Services Division

1. Approval of Corporate Transactions – Arkansas Code requires many corporate proceedings to be filed as public record in the Arkansas Secretary of State’s office. Most common among these transactions are the filing of Articles of Incorporation, Amendment, Merger, and Dissolution. Forms for the filing of these documents are available at no charge from the Business and Commercial Services Division online at www.sos.arkansas.gov/BCS/, or by contacting the office. Some filings may be made through our web service at a lower fee. Fee payments must be submitted when the documents are presented for filing. The principal corporate documents are discussed in detail in this guide, beginning

on page 14. However, if you need additional assistance, the staff of the Business and Commercial Services Division is available to answer questions and provide help. You can contact a local attorney or accountant.

2. Dissemination of Information – As the official record keeper of corporate documents, the Business and Commercial Services Division can provide various kinds of information on all registered corporations.

The Business and Commercial Services Division receives more than 2,000 telephone calls per week, most of which are from persons either requesting information on entities or checking on the availability of corporate names. (See page 8 for a discussion of corporate names.) Information may also be acquired online, by mail or by visiting our office.

The following information is available online or by telephone:

- Hours & Phone Numbers
- Availability of Entity Name
- Availability of Foreign Name
- Availability of Fictitious Names
- Type of Entity and Status
- Registered Agent for Legal Service of Process and Address
- State of Origin
- Authorized Stock
- Corporate Officers

3. Preparation of Certified Copies of Documents – Many legal proceedings and business transactions require the introduction or presentation of documents certified by the Secretary of State as true and accurate copies of the records in this office. Certified copies of the corporate records in the office of the Arkansas Secretary of State may be introduced into evidence in all courts within the state as prima facie evidence of the facts stated in the documents. The Arkansas Secretary of State may certify any corporate documents on file with the Business and Commercial Services Division. In addition to certified copies of documents, this office also prepares Good Standing Certificate, Certificate of Existence, and Certificate of Due and Diligent Search.

- A Certificate of Good Standing state that an entity has complied with all requirements regulated by the Arkansas Secretary of State Business and Commercial Services Division. Certificates of Good Standing can be purchased and downloaded online at www.sos.arkansas.gov/BCS/.

- A Certificate of Existence states that a corporation was incorporated or admitted to do business, whether it was in existence on a particular date, and whether it is currently in good standing with the Arkansas Secretary of State.

- A Certificate of Due and Diligent Search certifies that all available records of the Secretary of State’s office have been searched and that a particular corporation does not appear in the records.

Because of the volume of certification requests, please submit your order as early as possible. If you must have the order by a particular date, inform the clerk of the date by which you must have your order completed and whether you wish to pick it up or have it mailed. Certification orders must be paid for in advance and are usually processed within 24 to 48 hours after payment is received by the Secretary of State's office.

4. Legal Assistance – The Business and Commercial Services Division of the Arkansas Secretary of State is not engaged in the practice of law and cannot give legal advice or issue legal opinions. If you have specific questions regarding a legal opinion or legal advice please contact a private attorney or legal professional. Our staff attorney is available to assist with legal problems arising in connection with matters relating directly to this office. However, he may not render legal advice or counsel individuals about their legal rights. All complaints regarding corporate entities must be filed with the Arkansas Attorney General's office.

5. Forms – The Business and Commercial Services Division has forms available for the filing of most documents, as well as fee schedules and other materials designed to simplify or clarify transactions with this office. All forms are free of charge. These items may be obtained by visiting the Arkansas Secretary of State's web site at www.sos.arkansas.gov/BCS/ or by contacting the Business and Commercial Services Division.

6. Bulk Data Downloads – Listings of existing corporations, including the names and addresses of the corporation and its registered agent, are available for purchase. Lists may be prepared by corporate type (domestic or profit, nonprofit, and foreign). The charges for these computer printouts, data files or other media types are calculated by the number of records on the total order and can be purchased through the Arkansas Secretary of State's website at www.sos.arkansas.gov/BCS/ under the BCS Online Services Section.

7. Authentication of Documents for use abroad - Authentication of public documents for use outside the United States is provided by the Business and Commercial Services Division States in the form of an Apostille or a Certification. The documents must be Arkansas issued or certified by an Arkansas notary public, State Registrar, or Elected County Official. The Notarial Certificate or Certificate/Seal of the State Registrar or Elected County Official must be affixed to the document. If the document is not in English, a notarized translation of the entire document into English must be attached. It is recommended you contact the Embassy or a Consulate of the country where you intend to use the document to see what type of authentication is accepted before applying. Fees are \$10.00 for an Apostille and \$5.00 for a Certification and is payable in advance. Request for authentication are only accepted in person at the BCS office (drop off for later pickup) or by mail.

CHOOSING AN ENTITY TYPE

When starting a business, you may choose from several business forms or organizations. A variety of organizational structures are available for transacting business in Arkansas. In deciding which form of business is appropriate for your venture, a lawyer, CPA, tax advisor or financial advisor can provide critical information. Choosing the proper business entity for your business is vital to the success of your project. This booklet outlines some of the issues involved, but is not a substitute for sound legal and financial advice from competent lawyers, accountants and advisors. It is only a starting point.

One of the primary considerations in selecting a business organization is protection of the owners of the business from liability. Other considerations include tax treatment by the federal and state governments, management structure, future ownership, and capitalization. Arkansas laws determine how particular entities should be set up and conduct their business. These laws are very specific and set out the legal responsibility of each business form. Taxing authorities and regulatory agencies also have laws that pertain to business.

There is much written about choosing and setting up the proper form of business for your needs. Information can be found at libraries, small business development centers and on the Internet. Ultimately, however, legal counsel or a certified public accountant are probably needed to help you make the decision. The most common business structures are described in the following pages.

Sole Proprietorship

A business with a single owner with no formal or separate form of business structure is known as a sole proprietorship. The owner has sole control and responsibility of the business. A sole proprietorship is easily formed, allows important decisions to be made quickly, and typically has fewer legal restrictions. In this situation the owner and the business are indistinguishable. The business has limited life and cannot be transferred (as an entity) to others. The sole proprietor's responsibilities include:

- Obtaining all capital
- Personal liability for all debts and claims against the business
- Claiming all profits and losses on the owner's personal income tax return
- Obtaining state and local business licenses and permits
- Recording the name of the business with your local county clerk

Partnership

A partnership is an association of two or more persons acting as co-owners of a business and can be created by an oral or written agreement between the parties involved among other methods. However, a written agreement is

highly recommended. This agreement should set out the responsibilities and obligations of the partners as well as the percentage of ownership.

General Partnership

General partnerships are not required to file official registration beyond that required for a sole proprietorship, but may file to be on record as a general partnership in the Secretary of State's office. Check with your advisors.

General partnerships:

- Do not protect the personal assets of the business partners from claims against the partnership.
- Are required to file informational returns with the Internal Revenue Service and Arkansas Income Tax Division.
- Share their profits and losses among the partners according to their ownership percentage or other legal means. Partners are then required to claim this income or loss on their personal income tax return.

Limited Liability Partnership

A limited liability partnership (LLP) is like a general partnership. The LLP allows all the partners to take an active role in the management of the business while offering members some liability protection from actions of the other partners and the partnership and the partnership employees. LLPs are most often used by groups of professionals such as doctors, accountants or architects.

Limited Liability Partnerships:

- Are treated like partnerships by the Internal Revenue Service.
- Are required to file informational returns with the Internal Revenue Service and Arkansas Income Tax Division.
- Do not provide liability protection to individual partners for their own actions.
- Are created by filing a Qualification of Limited Liability Partnership with the Secretary of State.
- Must file an annual report with the Arkansas Secretary of State.

Limited Partnership

Limited partnerships (LP) are more intensely regulated than general partnerships. An LP may consist of general partners and limited partners. The general partner(s) manage the business and usually have no liability protection. The limited partner(s) are usually investors that are not involved in the day-to-day running of the business and whose liability is normally limited to the extent of their investment.

Limited partnerships:

- Are treated like a partnership by the Internal Revenue Service.
- Are required to file informational returns with the Internal Revenue Service and Arkansas Income Tax Division.
- Were originally developed for real estate development ventures.
- Are created by filing a Certificate of Limited Partnership with the Secretary of State.
- Must file an annual report with the Arkansas Secretary of State.

Limited Liability Limited Partnership

A limited liability limited partnership (LLLP) is a limited partnership which registers with the Secretary of State as an LLLP. One effect of registration is to limit the vicarious liability of the general partners in the same fashion that registration as an LLP limits the liability of the general partners of a general partnership.

Limited Liability Limited Partnerships:

- Are created by filing a Certificate of Limited Liability Limited Partnership.
- Are Limited Partnerships.
- Must file an annual report with the Arkansas Secretary of State.
- Are required to file information returns with the IRS and DFA.

Corporation

A corporation is a more complex form of business organization. The corporation is a legal entity and exists apart from its owners or shareholders. As a separate entity, the corporation has its own rights, privileges and liabilities apart from the shareholders, officers and board of directors. A corporation can buy and sell property, enter into contracts, sue and be sued. Elected officers and its board of directors manage the corporation.

Corporations:

- Are created by filing Articles of Incorporation with the Arkansas Secretary of State.
- May be formed for profit or for nonprofit purposes.
- Are unaffected in their duration by death or transfer of shares by any of the owners.
- Require more extensive record keeping.
- Pay taxes on their profits; profits are distributed to the owners via dividends and are taxable by state and federal taxing authorities.
- Must file annual franchise tax reports with the Arkansas Secretary of State.
- Files returns with the IRS and DFA.

S Corporation

The S Corporation is a corporation that chooses to be taxed under Subchapter S of the Internal Revenue Tax Code. Being an S Corporation is a tax matter only. S Corporations are “tax pass through” business entities, meaning their profits and losses are reported by their owners on the owners’ personal tax returns.

S Corporations:

- Are corporations in the view of the state and comply with state corporation laws.
- Must have only one class of stock.
- Must be made up of shareholders that are individuals, estates, or trusts, but not corporations.

- Can only have shareholders that are United States citizens or residents.
- Cannot be members of affiliated groups of corporations.
- Are limited to 75 shareholders.
- Are created by filing Articles of Incorporation with the Arkansas Secretary of State and then the Internal Revenue Service.
- Must file annual franchise tax reports with the Arkansas Secretary of State.

Limited Liability Company

Limited Liability Companies (LLC) combines many favorable characteristics of corporations and partnerships. The LLC provides limited liability to its members.

Limited Liability Companies:

- Must file Articles of Organization with the Arkansas Secretary of State.
- Allow members to manage a company themselves or to elect managers.
- Allow members to engage in management without risk of losing their limited liability status.
- Are a relatively new form of business organization.
- Enjoy less regulation on record keeping.
- May be taxed by the Internal Revenue Service as corporations or as partnerships, depending on their structure.
- Must file annual franchise tax reports with the Arkansas Secretary of State.
- Are required to file information returns with the IRS and DFA.

Nonprofit Corporation

Nonprofit corporations are created for public benefit, for mutual benefit for its members, or for religious purposes. Nonprofit corporation status does not guarantee that the organization will be granted tax-exempt status, nor does it ensure that the contributions to the organization are tax deductible. Becoming a nonprofit corporation is generally a prerequisite to applying for tax-exempt status under IRS Code, such as section 501(c)(3). To accommodate the vast number of entities choosing to file for 501(c)(3) status with the IRS, the Arkansas Secretary of State provides a blank template with suggested IRS language as well as the traditional nonprofit articles of incorporation templates. If the nonprofit corporation intends to solicit charitable contributions, it must also register with the Arkansas Attorney General's office.

Nonprofit Corporations:

- May not have shareholders or pay dividends.
- May compensate members, officers, and trustees (in reasonable amounts) for services rendered.

- Must have specific provisions in its Articles of Incorporation dealing with property distribution upon dissolution.
- Are created by filing Articles of Incorporation with the Arkansas Secretary of State.
- Must file an annual disclosure statement with the Arkansas Secretary of State.

Commercial Registered Agent

A commercial registered agent is an individual or entity that is in the business of providing registered agent services for registered entities in Arkansas. The primary purpose of the commercial registered agent is to accept service of process on behalf of the entities it represents.

Commercial Registered Agents:

- Are created by filing a Commercial Registered Agent Listing with the Arkansas Secretary of State.
- Are regulated by the Model Registered Agents Act (MoRAA) of 2007.

Nonfiling/Nonqualifying Entity

An entity that is not required to file or register in order to transact business in the state may choose to file a Nonfiling/Nonqualifying Entity Statement. This filing allows the entity to have its registered agent/service of process information on file with the Secretary of State.

Nonfiling/Nonqualifying Entity Statements:

- Are created by filing a Nonfiling/Nonqualifying Entity Statement with the Secretary of State.
- Do not qualify an otherwise nonqualifying entity.
- Do not provide any protection for the use of the name by the entity.

Section 3

CORPORATE NAMES

A corporation organized or admitted to do business in Arkansas is granted the exclusive use of a corporate name at the time it is file marked by the Arkansas Secretary of State. However, according to Arkansas Code 4-27-406, a corporate filing with the Arkansas Secretary of State does not necessarily give you the right to use your proposed corporate name, corporate name, assumed or fictitious name in this state if the use violates someone else's trade name, trademark, or service mark rights under the trademark laws of the United States, this state, or the common law. Prior to your use of the name, you are encouraged to research the names and marks of other parties used or registered in this state, or registered in the United States Patent and Trademark Office, or consult an attorney to determine the existence of any conflicting rights.

A. Requirements

1. The name of every Arkansas corporation must include the word “Corporation,” “Incorporated,” “Company,” or an abbreviation of one of these words. The corporate ending may vary due to the section of Arkansas Code under which the entity chooses to file. (See Application for Filing Articles of Incorporation, available online at www.sos.arkansas.gov/BCS/, or by contacting our office.)

2. No domestic or foreign corporation may take or assume a corporate name identical to the name of any other Arkansas corporation, or of any other foreign corporation authorized to transact business in Arkansas. The name must be distinguishable from other names on record.

NOTE: The name cannot be the same as the fictitious name of any Public Housing Authority.

B. Name Availability

1. Distinguishable names – If a proposed name begins with the same word or phrase as an existing name, the Arkansas Secretary of State will look for additional wording, which in some way significantly distinguishes the proposed name, such as a description of business purpose or activity.

2. All requests for name availability searches are available by contacting a business services representative or by conducting a name search on the Secretary of State’s web site www.sos.arkansas.gov/BCS/. The name searches are strictly preliminary searches and do not guarantee the right of the filer until actual corporate papers are filed with the Secretary of State’s office. It is not advisable to buy stationery, stock certificates, literature advertising or other items based upon a name availability search.

C. Reservation of Names

1. Corporate names may be reserved prior to incorporation for a period of 120 days when the Arkansas Secretary of State’s office receives the correct filing fee and the proper name reservation forms. The forms are available for electronic filing or downloading from the Secretary of State’s web site, www.sos.arkansas.gov/BCS/, visiting the office or contacting a corporate representative. Name reservations filed under the corporate act are non-renewable. Name reservations filed under the LLC and LP acts have a one-time renewal period.

2. When a corporate name has been reserved, and the right to that name is transferred in writing during the 120-day period, it can only be reserved for the balance of time remaining on the original 120-day period. The fee for transfer of name reservation and the form can be found online at www.sos.arkansas.gov/BCS/ or can be obtained by contacting a Business and Commercial Services corporate representative.

CHECKLIST FOR DOCUMENT FILINGS

This checklist helps to prevent some of the most common problems that delay the processing of documents filed with the Business and Commercial Services Division. Simply review the following checklist to ensure that your documents are complete and accurate.

A. All Documents

1. Check to see that every section of your document has been completed, including complete address (P.O. Box is not acceptable for registered agent). Incomplete documents cannot be approved and will be returned to the applicant for correction. **If the separate franchise tax contact information form is not completed, your annual franchise tax report (if applicable) and/or annual report may not reach you, causing your corporation to enter inactive or revoked status. Franchise taxes will still accrue, even if unpaid, until the business is dissolved or withdrawn formally.**
2. Make sure you have submitted the correct fee and that your check is not more than 60 days old. Sign your check and make it payable to the Arkansas Secretary of State. (A filing fee schedule may be obtained by accessing our website, www.sos.arkansas.gov/BCS/, writing or calling our office or visiting the Business and Commercial Services Division of the Office of the Secretary of State.)
3. Confirm that all necessary parties have signed the documents.
4. File an original set of documents. Do not send copies.
5. Be certain you are filing the correct document. Check to see if the form is for a profit, nonprofit, foreign, or domestic corporation.
6. Reserve your corporate name by Internet, mail, or in person at the Business and Commercial Services Division. A filing fee will reserve your name (upon availability) for 120 days. No reservations can be placed by telephone. A check for the availability of a corporate name by Internet or telephone is only a preliminary search and does not guarantee the name is available. It is not advisable to buy stationery or other items based upon a name search.

For all documents, the business must be current in its franchise tax filings and payments. Franchise taxes are due annually. Failure to pay can result in the imposition of additional fees, penalties and interest, or even revocation of the authorization to do business. Franchise taxes continue to accrue even for revoked businesses until the business is dissolved or withdrawn. Additional filings are prohibited for entities that fail to pay franchise tax.

B. Articles of Incorporation For Profit and Nonprofit Entities

1. Check all general points listed in Part A.
2. Check to see if you have provided a principal office address and a physical registered agent address in Arkansas. P.O. Boxes are not acceptable.
3. Nonprofit entities must list what will be done with their assets upon dissolution. The IRS requires specific wording in the Articles of Incorporation regarding the disposition of assets. Please verify with the IRS, before filing with the Arkansas Secretary of State, if you have questions and are applying for federal nonprofit status. The IRS website is **www.irs.gov**. To accommodate the vast number of entities choosing to file for 501(c)(3) status with the IRS, the Arkansas Secretary of State's office provides a blank template with suggested IRS language as well as the traditional nonprofit articles of incorporation templates.

C. Articles of Amendment

1. Check all general points listed in Part A.
2. Be certain to state clearly the text of each amendment and identify each article being amended.
3. Make sure annual reports/franchise taxes are current.

D. Dissolution

1. Check all general points listed in Part A.
2. Make sure annual reports/franchise taxes are current.
3. Fill out and pay Final Franchise Tax Report. All unpaid franchise taxes, penalties and interest must be paid.
4. Fill out and return correct dissolution form and fee.
(All tax exempt entities disregard items 2 and 3 above.)

E. Foreign Corporation Application for Authority to Transact Business

1. Check all general points listed in Part A.
2. Be sure to complete Article 7. This requires good faith estimates in dollar amounts.
3. A Certificate of Good Standing from the entity's domestic state must be filed with all Foreign Corporation Applications for Certificate of Authority to Transact Business in the state of Arkansas. This good standing must be dated within the past 30 days.

F. Foreign Certificates of Amendment

1. Check all general points listed in Part A.
2. Be certain to state clearly the text of each amendment and identify each article being amended.
3. Include a certified copy of the amendment, merger or consolidation officially filed in the corporation's domestic state, dated within 60 days.
4. Make sure annual reports/franchise taxes are current.

G. Withdrawal

1. Check all general points listed in Part A.
2. Make sure franchise taxes are current. All unpaid franchise taxes, penalties and interest must be paid.
3. Fill out annual report and/or Final Franchise Tax Report and pay franchise taxes.
4. Fill out and return the correct withdrawal form and fee.

H. Mergers

1. Check all general points listed in Part A.
2. The agreement or plan of merger must be submitted with the Articles of Merger. The agreement must detail:
 - a. The terms and conditions of the merger;
 - b. The manner of converting the shares of the non-surviving corporation(s) into shares or other securities of the surviving corporation; and
 - c. A statement of the amendments to the Articles of Incorporation of the surviving corporation necessary and/or desirable to effect the merger.
3. The effective date of the merger shall not be prior to, nor more than 30 days after, the date of the filing and approval of the Articles of Merger by the Secretary of State. If the effective date is not stated in the Articles of Merger, the effective date shall be the date of filing (and approval) of the Articles of Merger by the Secretary of State.
4. In a merger absorbing a domestic corporation into a foreign corporation, if the merger is filed in the foreign corporation's home state or country first, the surviving foreign corporation must file a certified copy of the Certificate of Merger from the foreign corporation's domestic state with the Arkansas Secretary of State within 30 days of the effective date of the merger. If the merger is filed in Arkansas first, the original signed documents merging the corporation must be filed with the Arkansas Secretary of State within 30 days of the effective date of the merger.
5. A surviving foreign corporation must seek admission to do business in Arkansas prior to or contemporaneously with the filing of the Articles of Merger. If the surviving foreign corporation does not intend to transact business in Arkansas, it must surrender to the Arkansas Secretary of State the Certificate of Admission and all amended Certificates of Admission of all non-surviving foreign corporations that were parties to the merger.
6. Make sure all annual reports and franchise taxes are current.

Section 5

CORPORATION FILING FEES

All filing fee schedules may be obtained by visiting our website, www.sos.arkansas.gov/BCS/, or by writing, calling or visiting the Arkansas Secretary of State's Business and Commercial Services Division.

Section 6

AVAILABLE FORMS

The following forms are available by downloading from the Arkansas Secretary of State's website, www.sos.arkansas.gov/BCS/, or visiting the office, contacting a corporate representative or electronic filing.

A. Domestic Corporations Forms

- Articles of Incorporation (also includes LLC, LP, LLP, LLLP, GP)
- Certificate of Amendment
- Change of Registered Agent Information
- Certificate of Dissolution
- Application for Reservation of Corporate Name
- Registration of Fictitious Name
- Articles of Incorporation for Nonprofit
- Annual Reports/Franchise Tax forms
- Franchise Tax Contact information form

B. Foreign Corporation Forms

- Statement of Corporation Seeking Authorization to do Business in Arkansas (also includes LLC, LP, LLP, LLLP, GP)
- Change of Registered Agent Information
- Certificate of Withdrawal
- Registration of Fictitious Name
- Registration of Corporate Name
- Application for Nonprofit Corporation to do Business in Arkansas
- Certificates of Amended Certificate of Authority
- Application for Reservation of Name
- Annual Reports/Franchise Tax forms
- Franchise Tax Contact information form

DOMESTIC CORPORATIONS

A. Articles of Incorporation

A corporation is formed under the Arkansas General Corporation Act by filing Articles of Incorporation with the Office of the Secretary of State. Before the Articles are prepared, a corporate name should be selected and reserved with the Business and Commercial Services Division office of the Secretary of State. (See pages 8 and 9 for discussion of corporate names and reservation of names.) The Office of the Secretary of State will review and approve these Articles and issue a Certificate of Incorporation, which marks the beginning of the corporate existence.

The filing must include one original of the Articles of Incorporation signed by all incorporators and containing the following information:

1. Name of the Corporation – Shall contain the word “Corporation,” “Incorporated,” or “Company,” or an abbreviation of one of these words, but not as the final word of the actual company name. “Final word(s)” or abbreviation(s) are immediately preceded by “and” or any symbol for “and.” For example, the corporate name could be “XYZ Company.” “But “ABC & Company” must be formally named “ABC & Company, Inc.”
2. Number of shares, which the corporation shall have the authority to issue:
 - a. Class (optional)
 - b. Series (if any)
 - c. Par value per share or statement that shares are without par value;
3. The name and physical address (P.O. Box is not accepted) of the corporation’s initial registered agent;
4. Name and address of each incorporator;
5. Purpose(s) for which the corporation is organized;
6. The articles of incorporation may also set forth other provisions not inconsistent with law regarding identity of directors, limitations of purpose, management and shareholder liability.

B. Certificate of Amendment

Subsequent to the issuance of the Certificate of Incorporation, the corporation may need or choose to amend its Articles of Incorporation. The Board of Directors must adopt a resolution setting out the proposed amendment(s) and direct that they be submitted to a vote of the shareholders of the corporation. The shareholders of the corporation entitled to vote on amendments must then vote to adopt the proposed amendment(s) Articles of Amendment. If all or a substantial number of

the articles are to be amended, Amended and Restated Articles of Incorporation may be filed which will supersede the original Articles of Incorporation.

An original of the Certificate of Amendment must be filed with the Arkansas Secretary of State with an officer's signature and the following information, pursuant to Arkansas Code 4-27-101:

1. Name of corporation;
2. Statements certifying the following information:
 - a. Article(s) which was (were) amended, plus exact wording;
 - b. That at a special (or regular) meeting of the stockholders of said corporation, duly called and held at the office of the company (give city, state, and date), the amendment(s) to the Articles of Incorporation was (were) offered and adopted;
 - c. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
 - d. If the amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;
 - e. An amendment approved by shareholders must list:
 - i. The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and
 - ii. Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group, plus a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

For filings pursuant to ACA 4-26-301 et. seq., please refer to the Arkansas Code or the template provided online by the Arkansas Secretary of State's office.

C. Change of Registered Agent Information

Every Arkansas domestic or foreign admitted corporation is required to register with the Arkansas Secretary of State its current principal office address in Arkansas and the name and address of the person designated as registered agent for service of process. If the corporation does not have an office or facility in Arkansas, the registered agent's address can serve as the principal office address. Changing the Registered Agent does not change the franchise tax credit information (which must be done separately).

The location of the principal office, the designation of registered agent, or both, may be changed by filing with the Arkansas Secretary of State a certificate signed by the president or other officer and containing the following information:

- Name of corporation
- Entity type
- Previous name and street address of registered agent
- New name and street address of registered agent

(The address of its registered office and the address of the business office of its registered agent as changed will be identical.)

Some registered agents may choose to be filed as a commercial registered agent and comply with the Model Registered Agents Act (MoRAA) of 2007. A commercial registered agent can be either an individual or an entity and must list the following information with the Arkansas Secretary of State's office:

- Name of individual or entity
- Jurisdiction
- Physical and mailing address for service of process along with an additional means of accepting service.

D. Domestic Limited Partnership

A limited partnership is a partnership formed by two or more persons, has as members one or more general partners and one or more limited partners.

Two or more persons desiring to form a limited partnership shall sign and swear to a certificate, which shall state:

- Name of the limited partnership; (Must contain the words limited partnership, L.P., or LP.)
- Physical and mailing address for designated office;
- Name and business address of each general partner;
- Any other matters the general partners determine to include therein.

E. Dissolution

A corporation may terminate its corporate existence by undergoing voluntary dissolution. The Board of Directors must first approve a resolution proposing dissolution. That resolution must then be adopted by a vote of the shareholders of the corporation. Upon adoption of the resolution by the shareholders, the Board of Directors may then proceed to dissolve the corporation by filing the Certificate of Dissolution signed by the president or other officer of the corporation and containing the following information:

1. Name of the corporation;
2. Date the dissolution was authorized;

3. If dissolution was approved by shareholders:
 - a. The number of total possible votes on the proposal to dissolve;
 - b. Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;
4. If the dissolution required approval by voting groups, the information in #3 above must be provided for each individual voting group entitled to participate.

F. Fictitious Name Registration

No corporation, foreign or domestic, shall conduct any business in Arkansas under a fictitious name unless it first files that name with the Arkansas Secretary of State. In case of a domestic corporation, a form supplied or approved by the Secretary of State must be filed with the county clerk of the county in which the corporation's registered office is located (unless located in Pulaski County), giving the following information:

- Fictitious name under which the business is or will be conducted;
- Description of the character of the business;
- Corporate name of the applicant;
- The state of incorporation;
- Location of the registered office of the applicant corporation in Arkansas;
- Statement that if applicant is a foreign corporation, it is admitted to and authorized to do business in Arkansas.

G. Name Reservation

1. The exclusive right to the use of a corporate name may be reserved by any person or corporation, foreign or domestic, by filing with the Arkansas Secretary of State a written application to reserve a specified corporate name. If the Secretary of State finds that the name is distinguishable upon its records from any other name reserved or registered or the name of any domestic corporation or any foreign corporation admitted to this State, it may be reserved for the exclusive use of the applicant for a period of 120 days.
2. The applicant may transfer the right to the exclusive use of a specific corporate name to another person or corporation by filing a Transfer of Reservation of Name form in the Office of the Secretary of State.
3. A name reservation filed under the corporate code section may not be renewed nor shall the same name be reserved on any subsequent application filed by, or for the benefit of, the original applicant or any person, firm or corporation identified with such applicant, or any transferee of the original applicant.

4. A name reservation filed under the limited liability or limited partnership code section may be renewed one time by the original applicant by filing the appropriate form and fee.

H. Nonprofit Articles of Incorporation

Any association or persons choosing to be incorporated as a nonprofit organization shall file under the Arkansas Nonprofit Act by completing nonprofit Articles of Incorporation with the Secretary of State. Before the Articles are prepared, a corporate name should be selected and verified with the Business and Commercial Services Division. (See page 8 and 9 for a discussion of corporate names and reservation of names.) The Office of Secretary of State will review and approve the Articles and issue a Certificate of Incorporation, which marks the beginning of the corporate existence.

If filing for federal tax exempt status, of 501(c)(3) please refer to the special template provided by the Arkansas Secretary of State's office.

The articles must include the following information:

1. Name of corporation;
2. Type of nonprofit corporation: Public-Benefit, Mutual-Benefit or Religious Corporation;
3. List whether corporation will have members;
4. Statement of any provisions for the regulation of the internal affairs of corporation, said purpose, and any provisions for distribution of assets on dissolution or final liquidation; (If filing for federal tax exempt status, please check with the IRS for this statement at www.irs.gov.)
5. Physical address (P.O. Box not acceptable) of main office, principal place of business, and the name and address of the registered agent;
6. Name and address of each incorporator.
7. **Reminder:** Nonprofits are required to file an annual disclosure statement by August 1, every year.

I. Updating Annual Report / Franchise Tax Contact Information

It is imperative that all annual report and franchise tax filing entities maintain an up-to-date mailing address with the Arkansas Secretary of State. The form can be download or electronically filed by visiting the BCS Website link <https://www.ark.org/sos/ofs/docs/index.php> and choosing the form, Application for Tax Contact Address Change. Tax Contact information can also be updated yearly when filing the entities annual report or franchise taxes. Franchise tax continues to accrue against all businesses each year until formally dissolved with the Arkansas Secretary of State. Failure to pay franchise taxes will preclude business from any other filing, until paid.

FOREIGN CORPORATIONS

A. Certificate of Authority

Any foreign corporation proposing to do intrastate business in Arkansas, or permitted to continue to do intrastate business, shall file with the Arkansas Secretary of State the following information, signed by an officer of the entity:

1. Name of the corporation;
2. State, territory or foreign country under whose laws the corporation was incorporated along with incorporation date and duration;
3. Purpose of entity;
4. Address of the general office or principal place of business in the state of origin;
5. Name and physical address (P.O. Box is not acceptable) of the resident agent upon whom service of process is authorized in Arkansas;
6. Address of the general office or principal place of business in the jurisdiction under whose laws the corporation was incorporated;
7. Number and par value, if any, of shares of the corporation's capital stock owned or to be owned by residents of this state;
8. Certificate of Good Standing dated within a 30-day time frame from the state of origin.

B. Change of Registered Agent Information

See Section 7, Item C, pages 15-16.

C. Foreign Limited Partnership

Before transacting business in Arkansas, a foreign limited partnership shall register with the Arkansas Secretary of State. In order to register, a foreign limited partnership shall file with the Secretary of State a copy of its Certificate of Limited Partnership and all amendments thereto, duly authenticated and certified by the proper authority.

A foreign limited partnership must submit to the Arkansas Secretary of State an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

1. Name of the limited partnership;
2. State in which it was organized;
3. Date of formation;
4. General character of business;
5. Name and physical address of the agent for service of process in Arkansas;

6. Address of principal office in the state of organization;
7. Name and address of each general partner;
8. Copy of the Certificate of Limited Partnership (or equivalent document) and all amendments thereto. (Must be certified by the Secretary of State of the state of origin, dated within 60 days.)

D. Certificate of Withdrawal

When a foreign corporation wishes to discontinue doing business in the state, an officer must execute a Certificate of Withdrawal with the Business and Commercial Services Division.

The Certificate of Withdrawal shall set forth the following information:

1. Name of the foreign corporation;
2. State of origin;
3. Contact name and mailing address for the withdrawing corporation.
4. **Reminder:** Franchise taxes must be current.

E. Registration of Fictitious Name

See Section 7, Item F, page 17

F. Reservation of Corporate Name

See Section 7, Item G, pages 17-18

G. Registration of Corporate Name

Any foreign corporation not authorized to transact business in Arkansas may register its corporate name, provided its name is distinguishable upon the records of the Secretary of State from the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered by another corporation.

Registration of a corporate name shall be made by executing the application for registration. Such registration will contain the following:

1. Name of the corporation;
2. Jurisdiction under whose laws the corporation was incorporated;
3. Date of incorporation;
4. Description of business in which entity is engaged;
5. Certificate of Good Standing under the laws of the state or territory in which the corporation is originally incorporated; (Must be dated within a 30-day time frame.)
6. Name registrations are renewable yearly between October 1 and December 31 by filing a renewal fee and form. (If a registration lapses, the corporation must complete name registration forms and obtain another registration for the initial fee instead of the renewal fee.)

H. Foreign Nonprofit Corporation

Prior to conducting business in Arkansas, a foreign nonprofit corporation shall first procure a Certificate of Authority from the Secretary of State. Application for such certificate of authority shall contain the following:

1. Name of the corporation;
2. State, territory, or foreign country under whose laws the corporation was incorporated;
3. Date of incorporation;
4. Period of duration;
5. Address of its principal office or place of business in the location of original incorporation;
6. Name and address of its proposed registered agent for service of process in Arkansas;
7. Names and business address of the corporation's current directors and officers;
8. List of corporation members if applicable;
9. Which entity type the nonprofit would be classified as if filed as an Arkansas domestic:
 - a. Public-Benefit Corporation
 - b. Mutual-Benefit Corporation
 - c. Religious Corporation
10. **Reminder:** Nonprofits are required to file an annual disclosure statement by August 1 each year.

I. Updating Annual Report / Franchise Tax Contact Information

It is imperative that all annual report and franchise tax filing entities maintain an up-to-date mailing address with the Arkansas Secretary of State. The form can be download or electronically filed by visiting the BCS Website link <https://www.ark.org/sos/ofs/docs/index.php> and choosing the form, Application for Tax Contact Address Change. Tax Contact information can also be updated yearly when filing the entities annual report or franchise taxes. Franchise tax continues to accrue against all businesses each year until formally dissolved with the Arkansas Secretary of State. Failure to pay franchise taxes will preclude business from any other filing until paid.

TRADEMARKS AND SERVICE MARKS

Filing Trademarks and Service Marks

Individuals and entities, both foreign and domestic, may choose to register their trademarks or service marks with the state of Arkansas. A state trademark is recognized as a symbol of the business and its product, and is denoted by “TM” as a superscript or subscript beside the mark. Only a trademark registered with the federal government may use the ® mark.

A state service mark, denoted by “SM,” symbolizes the services an entity offers. For example, the Nike logo appears on products and is a trademark, while a bank provides a service and its logo is a service mark. A mark must be in use before being registered with the Arkansas Secretary of State. A foreign entity may choose to register its trademark or service mark in the state of Arkansas even if that entity is not registered to conduct business in Arkansas.

To register a trademark or service mark with the Arkansas Secretary of State, the applicant must send a completed form and appropriate fee. Applications are available online at www.sos.arkansas.gov/BCS/. The application form must reflect the date the mark was first used anywhere, and the date it was first used in Arkansas. The application packet must also include three specimens of the mark in use. These may include business cards and stationery, literature, apparel, etc. Photographs are not acceptable unless they depict the mark used in signage. The “TM” and “SM” marks are not required to be printed on the specimens.

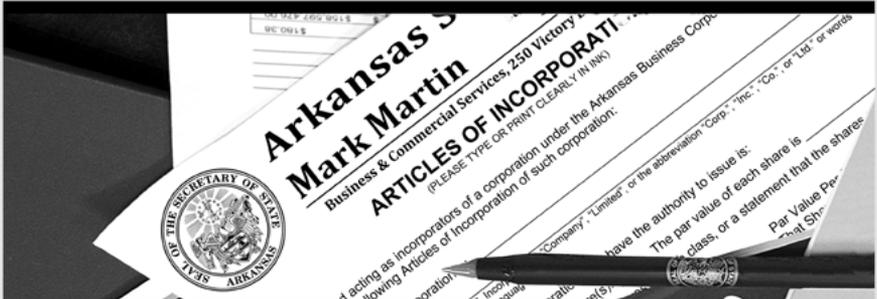
Renewing and Transferring Trade or Service Marks

A trademark or service mark is registered for five years. It may be renewed by repeating the application process.

A trademark or service mark may be transferred to another entity upon submission to the Arkansas Secretary of State of the appropriate fees and notarized Assignment of Registration form, signed by a representative of the original mark holder (“assignor”) and a representative of the prospective mark holder (“assignee”).



APPENDIX



GLOSSARY OF TERMS

Commercial Registered Agent: an individual or a domestic or foreign entity listed under Arkansas Code 4-20-106 to receive service of process for a corporation. All corporations must have a commercial registered agent or a non-commercial registered agent on file

Corporation: any company (Inc., Co., Incorporation, etc.) filed with the state of Arkansas

Dissolution: document filed by in-state (domestic) companies that have ceased doing business in Arkansas. Entities not formally dissolved continue to accrue franchise tax

Domestic: an entity originally established to conduct its business in the state of Arkansas

Entity: refers to any and all businesses filed with Arkansas, regardless of type

Foreign: an entity originally established in a state other than Arkansas, or in another country

Governor: a person by or under whose authority the powers of an entity are exercised and under

whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity

Nonprofit: a corporation that exists for religious, mutual or public benefit. Funds derived from its operation cannot be distributed to members as profits. Its tax status is determined by the Internal Revenue Service

For Profit: a corporation that exists to make a profit for its owners or shareholders. The tax status of the corporation is determined by the Internal Revenue Service

Registered agent: receives service of process for a corporation; all corporations are required to have a registered agent or a commercial registered agent on file

Withdrawal: document filed by out-of-state (foreign) companies that have ceased doing business in Arkansas. Entities not formally withdrawn continue to accrue franchise tax

CONTACT INFORMATION

You may find the contact information below helpful in obtaining additional information about small businesses, tax code, trademarks and other business questions.

Alcoholic Beverage Control

E-mail: abcadmin@dfa.state.ar.us
501-682-1105
Fax: 501-682-2221

Arkansas Attorney General

www.ag.arkansas.gov
323 Center Street, Suite 200
Little Rock, Arkansas 72201
501-682-2007
1-800-482-8982

Arkansas Economic Development Commission

www.arkansasedc.com
501-682-1121
Fax: 501-682-7394

Arkansas Department of Workforce Services

www.state.ar.us/esd/

Arkansas Home Inspector Registration Board

<http://www.ahib.org>
501-683-3710
Fax: 501-244-2333

Arkansas Insurance Department

www.insurance.arkansas.gov
501-371-2600
Fax: 501-371-2618

Arkansas Manufactured Home Commission

501-324-9032
Fax: 501-683-3538

Arkansas Oil and Gas Commission

www.aogc.state.ar.us
North division: 479-646-6611
Fax: 479-649-7656
South division: 870-862-4965
Fax: 870-862-8823
Little Rock: 501-683-5814
Fax: 501-683-5818

Arkansas Securities Department

www.securities.arkansas.gov
501-324-9260
Fax: 501-324-9268
Arkansas State Board of

Arkansas Small Business and Technology Development Center

www.asbtdc.org
University of Arkansas at Little Rock
College of Business Suite 260
2801 S. University
Little Rock, AR 72204
501-683-7700 or 1-800-862-2040
Fax: 501-683-7720

Arkansas State Bank Department

www.accessarkansas.org/bank
501-324-9019
Fax: 501-324-9028

Arkansas State Board of Public Accountancy

501-682-1520
Fax: 501-682-5538

Contractors Licensing Board

www.arkansas.gov/clb
501-372-4661
Fax: 501-372-2247

**Department of Finance
and Administration**

http://www.arkansas.gov/dfa

**Professional Engineers and
Land Surveyors**

www.arkansas.gov/pels
501-682-2824
Fax: 501-682-2827

Small Business Administration

Arkansas District Office
www.sba.gov/ar
2120 Riverfront Drive, Suite 250
Little Rock, AR 72202-1796
501-324-7379
Fax: 501-324-7394

United States Patent Office

www.uspto.gov/main/
trademarks.htm
Call the Trademark Assistance
Center at 1-800-786-9199 for help
on trademark matters.

Internal Revenue Service

www.irs.gov

Fayetteville

35 E. Mountain
Fayetteville, AR 72701
Monday-Friday 8:30 a.m.-4:30 p.m.
479-442-3948

Jonesboro

615 S. Main St.
Jonesboro, AR 72401
Monday-Friday 8:30 a.m.-4:30 p.m.
(Closed for lunch 11:30 a.m.-
12:30 p.m.)
870-802-0219

Fort Smith

4905 Old Greenwood Rd.
Fort Smith, AR 72903
Monday-Friday 8:30 a.m.-4:30 p.m.
479-649-8602

Little Rock

700 W. Capitol
Little Rock, AR 72201
Monday-Friday 8:30 a.m.-4:30 p.m.
501-324-5111

(For general information regarding other taxes that may apply to your corporation, you may wish to contact the Department of Finance and Administration, Revenue Division at 501-682-4775, or online at www.arkansas.gov/dfa.)

NOTICE

The information contained in this guide is for informational purposes only and should not be used as legal advice. If you require legal advice, please contact a private attorney or CPA. You may find information on the Arkansas Secretary of State's website, www.sos.arkansas.gov/BCS/. You may address questions through the Business and Commercial Services Division at 501-682-3409 or 1-888-233-0325.

NOTES



Mark Martin Secretary of State

Arkansas Secretary of State
Business and Commercial Services Division
1401 W. Capitol
Little Rock, Arkansas 72201-1094
501-682-3409; 888-233-0325
www.sos.arkansas.gov/BCS/

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