



NOTICE OF INTENT TO ADOPT PROPOSED AMENDMENTS TO THE OFFICE OF THE GEORGIA SECRETARY OF STATE, CHAPTER 590-7, COMMISSIONER OF CORPORATIONS, RULE 590-7-1-.01 DEFINITIONS, RULE 590-7-1-.13 REFUNDS, AND RULE 590-7-10-.01 DEFINITIONS.

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Assistant Corporation Commissioner of the Office of the Georgia Secretary of State, (hereinafter "Commissioner") proposes amendments to Commissioner of Corporations, Rule 590-7-1-.01 *Definitions*, Rule 590-7-1-.13 *Refunds*, and Rule 590-7-10-.01 *Definitions* (hereinafter "proposed rule amendments").

This notice, together with exact copies of the proposed rule amendments and a synopsis of the proposed rule amendments, is being distributed to all persons who have requested, in writing, that they be placed on a distribution list. A copy of this notice, the exact copy of the proposed rule amendments and a synopsis of the proposed rule amendments may be reviewed during normal business hours of 8:00 a.m. to 5:30 p.m. Monday through Friday, except official State holidays, at the Office of the Secretary of State, Corporations Division, 2 Martin Luther King, Jr. Drive, S.E., 313 West Tower, Atlanta, Georgia 30334. These documents will also be available for review on the Corporation Division's webpage at http://sos.ga.gov/index.php/Corporations/proposed_rules_and_rule_amendments. Copies may also be requested by contacting the Corporations Division at 404-656-2817.

The Commissioner will consider the adoption of these proposed rule amendments at a public hearing at 11:00 a.m. on October 3, 2016 at the office of the Corporations Division, 2 Martin Luther King, Jr. Drive, S.E., 313 West Tower, Atlanta, Georgia 30334. The Commissioner has the authority to amend these rules pursuant to authority contained in O.C.G.A. §§ 14-2-130, 14-3-130, 14-5-23, 14-9-1102, and 14-9-1103.

Interested persons may submit data, views, or arguments in writing to the Commissioner. Such written comments must be legible and signed, and should contain contact information from the maker (i.e. name, address, email address, telephone and/or fax number, etc.). At the public hearing anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to 5 minutes per person. Written comments or requests for oral comments should be sent to:

Julie Fisher
Office of the Georgia Secretary of State
Corporations Division
2 Martin Luther King, Jr. Drive, S.E.
313 West Tower
Atlanta, Georgia 30334
Email: jfisher@sos.ga.gov

To ensure their consideration, written comments and requests for oral comments must be received no later than 5:00 p.m. on September 30, 2016.

On September 2, 2016, the Commissioner determined that the formulation and adoption of these amended rules does not impose excessive regulatory cost on any registrant and any cost to comply with the proposed rule amendments cannot be reduced by a less expensive alternative that fully accomplishes the objectives of O.C.G.A. §§ 14-2-130, 14-3-130, 14-5-23, 14-9-1102, and 14-9-1103. The Commissioner

also determined that it is not legal or feasible to meet the objectives of O.C.G.A. §§ 14-2-130, 14-3-130, 14-5-23, 14-9-1102, and 14-9-1103 to adopt or implement differing actions for businesses as listed at O.C.G.A. §50-13-4(a)(3). The formulation and adoption of these rules will impact every registrant in the same manner.

For further information, please contact the Corporations Division at 404-656-2817.

This notice is given in compliance with O.C.G.A. § 50-13-4.

This 2nd day of September, 2016.

A handwritten signature in black ink, appearing to read "Shawnzia Thomas". The signature is written in a cursive style with a large, stylized initial "S".

Shawnzia Thomas
Assistant Corporation Commissioner

Posted: September 2, 2016

SYNOPSIS OF THE PROPOSED RULE AMENDMENT TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-1-.01 DEFINITIONS.

Purpose: The purpose of the amendment to Rule 590-7-1-.01 is to clarify, update, and remove outdated language from the defined terms; to provide for additional terms deemed necessary and proper for the administration of the duties set forth in O.C.G.A. Title 14; and to correct typographical errors.

Main Features: The new rule provides for the definition of additional terms; the clarification and updating of defined terms; and the correction of typographical errors.

DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED AMENDMENTS TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-1-.01 DEFINITIONS.

NOTE: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

590-7-1-.01 Definitions.

- (1) ~~Active corporation~~ **Corporation**. As used herein the term "active corporation" shall mean a corporation or foreign corporation that is on file with the Secretary of State and is ~~incorporated or authorized to do business in this state in compliance with the filing requirements of the Code.~~
- (2) ~~Amendment of annual registration~~. As used herein the term "amendment of annual registration" or "amended annual registration" shall mean the filing required or permitted to be filed by a corporation as set forth in the Code. An amended annual registration must be filed on the annual registration form provided by the Commissioner and shall include the payment of the annual registration fee set forth in the Code.
- (3)(2) **Annual registration Registration**. As used herein the term "annual registration" shall mean the filing required of each corporation and foreign corporation as set forth in the Code.
- (4)(3) **Applicant**. As used herein the term "applicant" shall mean any person making application to the Commissioner for any service provided or authorized by the Code.
- (5)(4) **Assistant Corporation Commissioner**. As used herein all references to the "Assistant Corporation Commissioner" shall mean the Assistant Corporation Commissioner appointed by the Secretary of State to oversee the administration of the Code as provided in O.C.G.A. Section 14-5-20.
- (6)(5) **Automated database Database**. As used herein, all references to the "automated database" shall mean the database maintained on the electronic data processing equipment provided to the Commissioner and supported by the Department of Administrative Services (DOAS).
- (7)(6) **Certificate/Certificate of Incorporation**. As used herein all references to "certificates" shall mean a form containing signatures of the Secretary of State and/or persons authorized by the Secretary of State, a date of filing and the printed or embossed seal of the State of Georgia. "Certificates" may also include the placing of a stamp on a document containing a time and date of filing and an acknowledgement of such filing. "Certificate" shall not mean share certificates or certificates which represent the shares of a corporation as provided for in O.C.G.A. Section 14-2-625. ~~"Certificate of Incorporation" means the certificate issued by the Secretary of State certifying that articles of incorporation have been filed with the Secretary of State pursuant to the Code.~~

(7) **Certificate of Incorporation.** As used herein all references to "Certificate of Incorporation" means the certificate issued by the Secretary of State certifying that articles of incorporation have been filed with the Secretary of State pursuant to the Code.

(8) **Code.** As used herein, all citations to "the Code" or "Code" refer to the Georgia Business Corporation Code, Georgia Nonprofit Corporation Code, Georgia Professional Corporation Act, Georgia Limited Liability Act, and other statutes set forth in Title 14 of the Official Code of Georgia Annotated, as amended.

(9) **Commissioner.** As used herein, all references to "the Commissioner" or "Commissioner" shall mean the Corporation Commissioner and Secretary of State of the State of Georgia.

(10) **Corporate Service Organization.** As used herein a "corporate service organization" shall mean:

(a) A person or entity, a substantial part of whose business is:

1. Providing information concerning corporations to the public;
2. Providing ministerial services to corporations to assist them in meeting the filing requirements of state and federal laws and regulations pertaining to such corporations; or
3. Maintaining a commercial database available to the general public; and

(b) Any other person or entity who shall demonstrate to the satisfaction of the Commissioner a need for direct access to the automated database.

(11) **Corporation.** As used herein the term "corporation" or "domestic corporation" shall mean a corporation for profit or nonprofit, which is not a foreign corporation, organized under or subject to the provisions of Chapter 2 or Chapter 3 of Title 14 of the Code.

~~(11)~~(12) **Depository.** As used herein, all references to "depository" shall mean a person, individual, organization, corporation or other entity designated by the Commissioner to accept filings, funds or other documents on his behalf and to perform certain ministerial services for the Corporations Division.

~~(12)~~(13) **Division.** As used herein all references to "Division" shall mean the Corporations Division of the Office of the Secretary of State which is the division that is delegated the authority by the Secretary of State to administer the provisions of the Code.

(14) **Entity.** As used herein, the term "entity" includes corporation and foreign corporation, nonprofit corporation and foreign nonprofit corporation, professional corporation and foreign professional corporation, limited partnership and foreign limited partnership; foreign limited liability partnership, and limited liability company and foreign limited liability company.

~~(13)~~(15) **Expedited review or expedited processing Review or Expedited Processing.** As used herein the term "expedited review" or "expedited processing" shall mean a special processing of eligible filings or service requests prior to the processing of routine filings or service requests. These filings or service requests, if approved for expedited treatment, will be processed as soon as possible within the time frame of the requested level of expedited service.

~~(14)~~(16) **Fee schedule Schedule.** As used herein the term "fee schedule" shall mean the schedule published and maintained by the Commissioner clearly setting forth the fees and charges for documents and services provided by the Commissioner and the Division. The fees may only be changed by an amendment to the Code. Service charges may only be changed by the posting by the Commissioner of such changes in the public access area of the Division offices for a minimum of thirty (30) days prior to such change being effective.

~~(15)~~(17) **Foreign corporation Corporation.** As used herein the term "foreign corporation" shall mean a corporation for profit or nonprofit organized under a law other than the law of the state of Georgia.

~~(16)~~(18) **Home state or home jurisdiction State or Home Jurisdiction.** As used herein all references to a "home state" or "home jurisdiction" shall mean the state or country where a

corporation has filed its articles of incorporation and has been issued a certificate of incorporation or such other document or acknowledgement evidencing the incorporation.

~~(17)~~(19) **Name certificate Certificate.** As used herein the term "name certificate" shall mean the document or confirmation number issued by the Commissioner establishing the availability of a name for use by a corporation.

~~(18)~~(20) **Person.** As used herein all references to "person" includes an individual and entity as defined by the Code.

~~(19)~~(21) **Pickup.** As used herein the term "pickup" shall mean a request by the applicant to pick up processed documents from the Office of the Secretary of State rather than having documents sent by United States mail, electronic mail, or other commercial delivery service.

(22) **Proposed Entity Name.** As used herein, the term "proposed entity name" shall mean:

(a) The name of an entity contained in articles of incorporation, articles of organization, certificate of limited partnership, application for certificate of authority, or an application for name reservation with the Secretary of State; or

(b) The name of an entity contained in articles of amendment, restated articles of incorporation, restated articles of organization, certificate of amendment, articles or certificate of merger, articles or certificate of share exchange, certificate of conversion, application for reinstatement, application for reinstatement from inactive status, or application for amended certificate of authority submitted to the Secretary of State for filing, if that name is different than the existing name of the entity or foreign entity on file and of record with the Secretary of State.

~~(20)~~(23) **Rule.** As used herein all references to "Rule" or "the Rules" shall mean the rules as they appear in the "Official Compilation, Rules and Regulations of the State of Georgia" as compiled and printed by the Secretary of State pursuant to the Georgia Administrative Procedure Act, O.C.G.A. §§50-13-1 *et seq.*

~~(21)~~(24) **Secretary of State.** As used herein all references to the "Secretary of State" shall mean the Secretary of State of the State of Georgia. The terms "Commissioner" and "Secretary of State" shall both refer to the Secretary of State of the State of Georgia.

(25) **Sign or Signature.** As used herein all references to "Sign" or "Signature" includes any manual, facsimile, conformed, or electronic signature.

Authority O.C.G.A. Secs. 14-2-130, 14-2-140, 14-3-140, 14-5-20, 14-5-23.

SYNOPSIS OF THE PROPOSED RULE AMENDMENT TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-1-.13 REFUNDS.

Purpose: The purpose of the amendment is to reduce the time period allowed for requesting a refund.

Main Features: The amendment changes the time period allowed for requesting a refund from twenty-four (24) months to six (6) months.

DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED AMENDMENTS TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-1-.13 REFUNDS.

NOTE: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

590-7-1-.13 Refunds

(1) Notwithstanding Rule 590-7-1-.01(~~3~~), and for purposes of this Rule only, an “applicant” shall mean the party who submits a written request for refund to the Commissioner and is the original payor, the proper legal entity of the original payor, or its legally authorized representative.

(2) An applicant shall be refunded all fees in an amount which has been determined to have been paid in error, less deduction of an amount as otherwise provided in this Rule. Payment of any refund amount shall be made interest free. Each request shall be made in writing and submitted in a manner as required by the Commissioner and shall contain such information as the Commissioner may deem as reasonably necessary, which may include applicant’s name, date of request, applicant’s contact information, reason for refund, original amount paid and signature. All requests for refund must be made by the applicant or an authorized representative. It is the sole responsibility of the applicant to provide all documentation supporting the request for refund.

(3) For request for refund to be valid, it must be complete with all supporting documents and submitted within ~~twenty-four (24)~~ six (6) months of the date of the original payment. No request for refund that is incomplete with missing information or supporting documentation or that is made beyond the expiration of ~~twenty-four (24)~~ six (6) months following the date of the original payment shall be processed.

(4) All completed refund requests shall be processed by the Commissioner, or his or her delegate, and shall be submitted for review and payment as soon as reasonably possible following receipt of the completed request. Notwithstanding the foregoing, the Commissioner may initiate the refund process in the event that a billing error is discovered in absence of an applicant’s request for refund.

(5) Upon review of the request for refund and supporting documentation, the Commissioner may authorize payment of the requested amount, refund a lesser amount, or reject the request if the facts of the matter support such a conclusion.

(6) In the event there is an outstanding balance of unpaid fees owed by the applicant, the Commissioner is authorized to offset any refund amounts as payment for such unpaid fees and any costs.

- (7) All refunds must be made payable in the name of the original applicant.
- (8) Once a refund is paid to an applicant, the matter shall be considered final and the Commissioner shall not accept any new request for refund relating to the same matter.

Authority: O.C.G.A. §§ 14-2-130, 14-5-23.

SYNOPSIS OF THE PROPOSED RULE AMENDMENT TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-10-.01 DEFINITIONS.

Purpose: The purpose of the amendment to Rule 590-7-1-.01 is to clarify, update, and remove outdated language from the defined terms; to provide for additional terms deemed necessary and proper for the administration of the duties set forth in O.C.G.A. Title 14; and to correct typographical errors.

Main Features: The new rule provides for the definition of additional terms; the clarification and updating of defined terms; and the correction of typographical errors.

DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED AMENDMENTS TO THE COMMISSIONER OF CORPORATIONS, RULE 590-7-10-.01 DEFINITIONS.

NOTE: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

590-7-10-.01 Definitions. Amended.

(1) ~~Active limited partnership~~Limited Partnership. As used here the term "active limited partnership" shall mean a limited partnership or foreign limited partnership that is on file with the Secretary of State and is in compliance with the filing requirements of the Official Code of Georgia or a limited partnership that has made an annual registration filing within the past three (3) years.

(2) ~~Amendment of annual registration~~. As used herein the term "amendment of annual registration" or "amended annual registration" shall mean the filing required or permitted to be filed by a corporation as set forth in the Code. An amended annual registration must be filed on the annual registration form provided by the Commissioner and shall include the payment of the annual registration fee set forth in the Code.

(3)(2) Annual registration Registration. As used herein the term "annual registration" shall mean the filing required of each limited partnership and foreign limited partnership as set forth in the Code.

(4)(3) Applicant. As used herein the term "applicant" shall mean any person making application to the Secretary of State or any service provided or authorized by the Code.

(5)(4) Assistant Corporation Commissioner. As used herein all references to the "Assistant Corporation Commissioner" shall mean the Assistant Corporation Commissioner appointed by the Secretary of State to oversee the administration of the Code as provided in O.C.G.A. §§ 14-5-20 and 14-9-1102.

(6)(5) Automated database Database. As used herein, all references to the "automated database" shall mean the database maintained on the electronic data processing equipment provided to the Secretary of State and supported by the Department of Administrative Services (DOAS).

(7)(6) Certificate of filing Filing. As used herein all references to "certificates" shall mean a certificate of filing or a form containing signatures of the Secretary of State and/or persons authorized by the Secretary of State, a date of filing and the printed or embossed seal of the State of Georgia. The certificate of filing may also include the placing of a stamp on a document containing a time and date of filing and an acknowledgement of such filing.

~~(8)~~**(7) Certificate of Limited Partnership.** As used herein all references to a "certificate of limited partnership" shall mean the document filed with the Secretary of State to form a limited partnership pursuant to the Code.

~~(9)~~**(8) Code.** As used herein, all citations to "the Code" or "Code" refer to the Georgia Revised Uniform Limited Partnership Act, as amended, and other statutes set forth in Title 14 of the Official Code of Georgia Annotated.

~~(10)~~**(9) Commissioner.** As used herein, all references to "the Commissioner" or "Commissioner" shall mean the Corporation Commissioner and Secretary of State of the State of Georgia.

~~(11)~~**(10) Corporate Service Organization.** As used herein a "corporate service organization" shall mean:

(a) A person or entity, a substantial part of whose business is:

1. Providing information concerning corporations and other business organizations to the public;
2. Providing ministerial services to corporations and other business organizations to assist them in meeting the filing requirements of State and federal laws and regulations pertaining to such organizations; or
3. Maintaining a commercial database available to the general public; and

(b) Any other person or entity who shall demonstrate to the satisfaction of the Secretary of State a need for direct access to the automated database.

~~(12)~~**(11) Depository.** As used herein, all references to "depository" shall mean a person, individual, organization, corporation or other entity designated by the Secretary of State to accept filings, funds or other documents on his behalf and to perform certain ministerial services for the Corporations Division.

~~(13)~~**(12) Division.** As used herein all references to "Division" shall mean the Corporations Division of the Office of the Secretary of State. This is the organizational division that is delegated authority by the Secretary of State to administer the provisions of the Code.

~~(14)~~**(13) Domestic Limited Partnership.** As used herein "limited partnership" and "domestic limited partnership" shall mean a limited partnership or limited liability limited partnership formed in the State of Georgia pursuant to the Code.

(14) **Entity.** As used herein, the term "entity" includes corporation and foreign corporation; nonprofit corporation and foreign nonprofit corporation, professional corporation and foreign professional corporation, limited partnership and foreign limited partnership, foreign limited liability partnership, and limited liability company and foreign limited liability company.

(15) ~~Expedited review or expedited processing~~ **Review or Expedited Processing.** As used herein the term "expedited review" or "expedited processing" shall mean a special processing of eligible filings or service requests prior to the processing of routine filings or service requests. These filings or service requests, if approved for expedited treatment, will be processed ~~as soon~~ as possible within the time frame of the requested level of expedited service.

(16) ~~Fee schedule~~ **Schedule.** As used herein the term "fee schedule" shall mean the schedule published and maintained by the Secretary of State clearly setting forth the fees and charges for documents and services provided by the Secretary of State. The fees may only be changed by an amendment to the Code. Service charges may only be changed by the posting by the Secretary of State of such changes in the public access area of the Division offices for a minimum of thirty (30) days prior to such change being effective.

(17) ~~Foreign limited partnership~~ **Limited Partnership.** As used herein the term "foreign limited partnership" shall mean a limited partnership or limited liability limited partnership formed under laws other than laws of the state of Georgia and having as partners one or more general partners and one or more limited partners.

(18) ~~Home state or home jurisdiction~~ **State or Home Jurisdiction.** As used herein all references to a "home state" or "home jurisdiction" shall mean the state or country where a

limited partnership has filed its partnership agreement or certificate of limited partnership and has been issued a certificate of limited partnership or such other document or acknowledgement evidencing the formation of the limited partnership.

(19) **Name certificate Certificate.** As used herein the term "name certificate" shall mean the document or confirmation number issued by the Secretary of State establishing the availability of a name for use by a limited partnership.

(20) **Person.** As used herein, all references to "person" includes an individual and a business, legal, or commercial entity as defined by the Code.

(21) **Pickup.** As used herein the term "pickup" shall mean a request by the applicant to pick up processed documents from the Office of the Secretary of State rather than having documents sent by United States mail, electronic mail, or other commercial delivery service.

~~(24)~~(22) **Proposed Entity Name.** As used herein, the term "proposed entity name" shall mean:

(a) The name of an entity contained in articles of incorporation, articles of organization, certificate of limited partnership, application for certificate of authority, or an application for name reservation with the Secretary of State; or

(b) The name of an entity contained in articles of amendment, restated articles of incorporation, restated articles of organization, certificate of amendment, articles or certificate of merger, articles or certificate of share exchange, certificate of conversion, application for reinstatement, application for reinstatement or reactivation from inactive status, or application for amended certificate of authority submitted to the Secretary of State for filing, if that name is different than the existing name of the entity or foreign entity on file and of record with the Secretary of State.

~~(24)~~(23) **Rule.** As used herein all references to "Rule" or "the Rules" shall mean the rules as they appear in the "Official Compilation, Rules and Regulations of the State of Georgia" as compiled and printed by the Secretary of State pursuant to the Georgia Administrative Procedure Act, O.C.G.A. §§50-13-1 *et seq.*

~~(22)~~(24) **Secretary of State.** As used herein all references to the "Secretary of State" shall mean the Secretary of State of the State of Georgia.

(25) **Sign or Signature.** As used herein all references to "Sign" or "Signature" includes any manual, facsimile, conformed, or electronic signature.

Authority O.C.G.A. Secs. 14-9-1102 and 14-9-1103.