

Firms Must Comply With 'Fictitious Business Name' Rules

Individuals or entities using a "fictitious business name" are required to comply with the fictitious business name laws. Failing to comply has significant legal ramifications. For example, an individual business owner may be barred from pursuing claims in court if they fail to comply. In a trade name dispute a person who fails to comply may have difficulty proving they have superior rights to their own business name. Here are answers to some frequently asked questions about the state's fictitious business name laws.

Question: What is a "fictitious business name"?

Answer: A fictitious business name for an individual doing business means a name that does not include the individual's last name or that suggests there are additional owners. Examples of names that are deemed to suggest additional owners include "& Company," "& Son," "& Associates," and so forth.

For a corporation or limited liability company, a fictitious business name is any name other than the exact name stated in the articles or certificate filed with the Secretary of State that formed the entity.

For a partnership, a fictitious business name is any name that does not include the last name of each general partner or a name that suggests the existence of additional owners.

Q: Does a fictitious business name create a separate entity?

A: No. Doing business under another name does not create an entity distinct from the person or entity operating the business. It is just another name for the same person or entity.

Q: What is the purpose of the fictitious business name requirements?

A: The law's purpose is to protect those who deal with a business that uses a fictitious name. The Legislature wants the public, and especially creditors, to be able to find out the true identities of persons who do business using a fictitious name.

Q: Are there any words that cannot be included in a fictitious business name?

A: Under the law, a fictitious business name cannot include the words "Corporation," "Corp.," "Incorporated," or "Inc." unless the business is a corporation. Similarly, a fictitious business name may not include words suggesting it is a limited liability company unless the business really is a limited liability company. So an individual who operates a business, is not allowed to adopt a name that includes words like "Corp." or "Ltd." or "Inc."

Q: What steps must be taken to comply with the fictitious business name law?

A: Any person or entity doing business for profit in California must file a fictitious business name statement in each county where business is conducted.

The registrant must also publish the fictitious business name statement in a newspaper of general circulation in the county of the company's principal place of business.

Q: Are non-profit entities required to

comply with the fictitious business name law?

A: Non-profit entities are not subject to the fictitious business name requirements. They are subject to other requirements. Also, a business operating for the purpose of making a profit, must comply with these rules, even if it does not have profit in a particular year. Whether a company is a profit, or non-profit, depends on its purpose, not its actual results.

Q: How long does the fictitious business name registration last?

A: The filing of a fictitious business name statement expires after five years. It must be renewed every five years.

Q: What can happen if an individual or entity fails to comply with the fictitious business name requirements?

A: A party may not maintain an action on a



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contract or transaction made under the fictitious business name. Thus, an individual or entity may be barred from using the court system to enforce contracts until the requirements are satisfied. This can delay, or even prevent a company from enforcing its legal rights. The penalty does not apply to a tort claim, such as an auto accident.

Q: Are there

benefits to filing a fictitious business name statement?

A: Yes. Filing a fictitious business name statement establishes a legal presumption that the registrant has the exclusive right to use the fictitious name in the county, and has the right to prevent others from using a confusingly similar trade name in the county. To get this presumption the registrant must be the first to file the statement in that county, and must be engaged in a trade or business using the fictitious business name. In a lawsuit concerning rights to a trade name, the public record may provide valuable protection to a litigant.

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