

NAMING THE BUSINESS ENTITY

CERTIFICATE OF ASSUMED NAME

When Filing is Required

An individual or partnership that conducts or transacts business in Minnesota under a name that is different from the full, true name of each business owner must register the name of the business by filing a certificate of assumed name with the Secretary of State. A corporation, limited partnership, limited liability partnership or limited liability company that conducts business under a name that is different from the exact, legal name likewise must file a certificate of assumed name for the business name.

An assumed name filing is also required when a general or limited partnership that is not also a limited liability partnership (or its partners) wishes to file statements of partnership authority, statement of denial, statements of merger, statements of dissociation, statements of dissolution or amendments or cancellations of those statements. (Note that such a partnership is not “assuming” a business name by making these filings; instead, the reason for making the certificate of assumed name filing is that the Secretary of State requires it to be filed before any such statements may be filed.)

For example, if John Smith, a sole proprietor, does business under “Smith’s Realty,” he must file a certificate of assumed name. Filing is not required, however, if John Smith, a sole proprietor, does business as “John Smith Realty.” Likewise, if Able Building Company, a corporation, does business as “ABC Construction,” it must register the assumed name “ABC Construction.” If, however, Able Building Company does business under the name Able Building Company, it is not required to file a certificate of assumed name.

Restrictions on Assumed Names

An assumed name may include a designation required to be in the name of a business entity only if the business owner using the assumed name is that type of entity. For example, ABC Incorporated, a corporation, may file the assumed name XYZ Limited, because Limited is a corporate designation and the business owner is a corporation. If, however, John Smith is an individual in the realty business, the assumed name cannot be registered as “Smith Realty, Inc.” Also, assumed names may not include in their names a geographic reference to a place or community if the business is not located in that community. Finally, financial institutions wishing to use an assumed name must first receive approval from the commissioner of the Department of Commerce.

Reason for Filing

The reason for filing a certificate of assumed name is to provide information to the consumer on the identity of the business owner. **Registration of the assumed name does not protect the name against use by other persons.** It is up to the individual to decide whether to take legal action to prevent use of the name. An attorney can provide advice on the likelihood of success and potential costs of such a lawsuit. **Note also that registering a domain name or Federal trademark is a process completely separate from making any filing with the Secretary of State.**

Determining Whether an Assumed Name is Available

An assumed name will not be accepted for filing if it is the same as, or is not distinguishable from, the name of a corporation, limited liability company, limited partnership, limited liability partnership or state trademark on file with the Secretary of State. (See the section titled "Determining Whether A Name is Distinguishable".)

Business owners may call the general information line of the Secretary of State (651) 296-2803, or access the Secretary of State's website, www.sos.state.mn.us, prior to registration to determine whether a name is available. The Secretary of State will perform a preliminary check but does not guarantee that the name will be available at the time of filing. There is no procedure for reserving an assumed name. A sole proprietorship or partnership that intends to incorporate at a later date may, however, reserve the corporate name by filing a reservation of corporate name with the Secretary of State. This procedure is described in the section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota* on forming a corporation.

2009 legislation provides that upon the dissolution or termination of a business entity for failure to file an annual renewal, the Secretary of State shall automatically file a name reservation to hold the name of the dissolved or terminated entity for a period of one year from the date of dissolution or termination. The intent of this legislation is to prevent a party from "name squatting" on the name of a business that has forgotten to file its yearly renewal and then demanding payment from the business to get the name back.

Filing Procedure

A simple, one-page certificate of assumed name form can be downloaded from the Secretary of State's website at www.sos.state.mn.us/index.aspx?page=331, and is also available by mail from that office. The business owner completes and signs the form and files it with the Secretary of State, along with a filing fee. The Secretary of State then processes the form. After the Secretary of State notifies the business owner that the filing is accepted, the business owner must have the certificate published for two consecutive issues in a newspaper qualified to print legal notices (sometimes called a "legal newspaper") in the county where the registered office or principal place of business is located. A qualified newspaper is one which meets the statutory standards established by Minn. Stat. § 331A. The cost of publishing this notice is set by the newspaper and paid for by the person or entity making the assumed name filing. The Secretary of State maintains a list of "legal newspapers."

Failure to publish the notice renders the assumed name filing invalid. A business that fails to file its assumed name as required by law will be assessed \$250 in costs at the time of any subsequent lawsuit by or against the business.

Duration of Filing Period; Filing Amendments

A certificate of assumed name is valid as long as an annual renewal is filed, unless there are changes in the information provided on the certificate. The Secretary of State mails the business a renewal form six months prior to expiration of the certificate. For this reason, it is important to file an amendment to the assumed name certificate each time the address information on the certificate becomes outdated.

If other information provided on the certificate of assumed name changes, the business must also file an amendment with the Secretary of State. Any amendments must be filed within sixty days after the change takes place.

See the Secretary of State fee schedule in the *Guide* for filing fees.

NAMING A CORPORATION, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP OR LIMITED LIABILITY COMPANY

Statutory Requirements

Name requirements for corporations, limited liability partnerships and limited liability companies are established by statute.

The name of a corporation must:

- Be in the English language or any other language expressed in English characters;
- Contain the words “corporation”, “incorporated”, or “limited”, or an abbreviation of one or more of these words, or the word “company” or the abbreviation “Co.” if that word or abbreviation is not preceded by “and” or “&” or in the case of a professional corporation, the words “professional association,” or “chartered,” or the abbreviation “P.A.”;
- Not contain a word or phrase indicating that the corporation conducts a business that is not a legal business purpose; and
- Be distinguishable from the name of each domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or any reserved name, assumed name, trademark or servicemark on file with the Secretary of State at the time of the filing.

The name of a limited partnership that is not a limited liability partnership must:

- Contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP” and may not contain the phrase “limited liability limited partnership” or the abbreviation “LLLLP” or “L.L.L.P.”

The name of a limited liability partnership must:

- Be in the English language or any other language expressed in English characters;
- Contain the words “limited liability partnership” or the abbreviation “L.L.P.” or in the case of a professional limited liability partnership the choices already stated or the words “professional limited liability partnership” or the abbreviation “P.L.L.P.”;
- Not contain a word or phrase indicating that the limited liability partnership conducts a business that does not constitute a legal business purpose;
- Be distinguishable from the name of each domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or any reserved name, assumed name, trademark or servicemark on file with the Secretary of State at the time of the filing; and

- If the limited liability partnership is also a limited partnership, contain the phrase “limited liability limited partnership or the abbreviation “LLLP,” or “L.L.L.P.,” and must not otherwise contain the abbreviation “LP” or “L.P.”

The name of a limited liability company must:

- Be in the English language or any other language expressed in English characters;
- Contain the words “limited liability company” or the abbreviation “LLC”, or in the case of a professional limited liability company the words “professional limited liability company” or the abbreviation “PLC”;
- Not contain the words “corporation” or “incorporated” or the abbreviations of either or both words;
- Not contain a word or phrase that indicates or implies that the limited liability company is organized for a purpose other than a legal business purpose; and
- Be distinguishable from the name of each domestic or foreign limited liability company, corporation, limited partnership, limited liability partnership or any reserved name, assumed name, trademark or servicemark on file with the Secretary of State.

Determining the Availability of a Corporate Name or Limited Liability Company Name

The Secretary of State will not accept for filing articles of incorporation for a corporation, articles of registration for a limited liability partnership or articles of organization for a limited liability company if the name of the corporation, limited liability partnership or limited liability company is the same as, or not distinguishable from, the name of a Minnesota or foreign corporation, limited liability company, limited partnership, limited liability partnership or reserved name or trademark. (See the section titled “Determining Whether A Name is Distinguishable” later in this chapter.)

The Secretary of State will perform a preliminary check to determine the availability of a corporation, limited liability partnership or limited liability company name before the articles of incorporation, registration or organization are filed. Business owners may call the Secretary of State, or access the Secretary of State website, www.sos.state.mn.us, prior to filing to determine whether the name is available. The telephone number to call is (651) 296-2803. The Secretary of State does not guarantee that the name will be available at the time of filing, however incorporators or organizers who wish to place a hold on a name before proceeding with formation of a corporation or limited liability company may file a name reservation with the Secretary of State. (See the section “Reserving a Corporate Name or Limited Liability Company Name.”)

Warning

As is the case with filing a certificate of assumed name, the registration of a corporate name or limited liability partnership or limited liability company name does not necessarily mean that the name can be used without penalty. There may be existing users of that name who have perfected a prior federal trademark or common law right to the name without filing with the

Office of the Minnesota Secretary of State. Note also that registering an Internet domain name is a process completely separate from making a filing with the Secretary of State. These users may be able to use the courts to prevent the incorporators, organizers, or business entity from actually using the name even though it may be available for registration with the Secretary of State.

Reserving a Corporate Name or Limited Liability Company Name

A corporate name or limited liability company name may be reserved by an individual or entity in one of the eligible categories listed below. The reservation is made on a form available from the Secretary of State, and is effective for 12 months. The reservation may be renewed for an unlimited number of 12-month periods. The fee for reserving the name appears in the *Guide*.

Eligible categories are:

- A person doing business in this state under the desired name (the term “person” includes a corporation or unincorporated association);
- A person intending to incorporate under Minn. Stat. § 302A or form a limited liability company under Minn. Stat. § 322B;
- A domestic corporation or domestic limited liability company intending to change its name;
- A foreign corporation or foreign limited liability company intending to apply for a certificate of authority to transact business in Minnesota;
- A foreign corporation or foreign limited liability company authorized to transact business in Minnesota and intending to change its name;
- A person intending to incorporate a foreign corporation or foreign limited liability company and intending to have that entity apply for a certificate of authority to transact business in Minnesota; or
- A foreign corporation or foreign limited liability company doing business under that name or a name deceptively similar to that name in one or more states other than Minnesota and not described above.

DETERMINING WHETHER A NAME IS DISTINGUISHABLE

General Rule

In general, any name which contains a different word from existing names on file with the Secretary of State is distinguishable and the name is acceptable for filing as an assumed name or as the name of a corporation or limited liability partnership or limited liability company. Exceptions to this general rule are stated in the following section.

Exceptions

Names which are identical except for the following are not distinguishable and will not be accepted for filing:

- Corporate endings regardless of where they appear in the name. These include Incorporated, Corporation, Company, Limited, Limited Liability Company, Limited Liability Limited Partnership, Professional Limited Liability Company, Limited Liability Partnership, Professional Limited Liability Partnership, Professional Association, Limited Partnership and their abbreviations, and Chartered.
- The inclusion or omission of articles of speech, conjunctions, contractions, prepositions or punctuation. An article of speech is any one of the words "a," "an," or "the." A conjunction is a word or symbol that joins clauses, phrases or words together. Examples include "and," "or," "as," "because," "but," "+," "-", "&." A contraction is the shortened form of a word such as assn. for association and dept. for department. A preposition is a word which expresses the relationship between a noun and another word. Examples are "at," "by," "in," "up," "of," "to."
- The abbreviation versus the spelling out of a word or different tenses of the same word. An abbreviation is the shortened form of a word or a recognized shortening of a word to an unrelated combination of letters, e.g., "Mister" to "Mr.," "pound" to "lb.," "Brothers" to "Bros."
- The spacing of words, the combination of commonly used two-word terms or the splitting of words usually found in compound form.
- An obvious misspelling or alternative spelling or homonym.
- The use of the word or numerals (including Roman) for the same number, e.g., "two," "2," or "II."

Options for Dealing with Names Which Are Not Distinguishable

A business that wishes to use a name that is not distinguishable from a name that is already on file with the Secretary of State has several options. These include changing the name, obtaining and filing consent to use the name, filing a court order, and filing a statement of dormant business. A fee is charged for each filing.

Changing the Applied-For Name. The name may be changed by adding or deleting words to distinguish the name.

Filing Consent to Use the Name. Written consent may be obtained from the holder of the conflicting name and filed with the Secretary of State. A form for this purpose is available from the Secretary of State's office. Applicants for a trademark may not obtain consents, but they may submit affidavits from themselves and from holders of conflicting names describing the nature of the businesses and the geographic and market area served as evidence that the marks will not be confusingly similar. There is no fee for filing these affidavits, although a fee is charged for filing a consent.

Filing a Court Order. An applicant for a name who obtains a court order establishing a prior right to use of that name may file the name. The court order must be attached to the filing.

Filing a Statement of Dormant Business. To use this method, the applicant must file a signed affidavit stating that: the existing corporation or business has been in existence for three years or more and is on file with the Secretary of State; the existing corporation has not filed anything with the Secretary of State in the past three years; the applicant mailed a written notice by certified mail return receipt requested, to the registered office of the existing corporation or business, and the notice has been returned as undeliverable; the applicant has made a diligent inquiry and has been unable to find a telephone listing for the existing corporation or business in the county of its registered office; and the applicant has no knowledge that the existing corporation or business is still operating.
