

Insights

Doing Business Under Another Name: Fictitious Name Registration in Florida

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If you own a small business in Florida, it's likely that you are operating your business under a catchy name which describes the nature of your business, such as "Larry's Low-Cost Landscaping" or "A-1 Affordable Auto Parts." Even if you structure your business as a corporation, limited liability company or partnership, you may still advertise or promote your business under a different name. Any time you operate a business in Florida under a name which is different than your individual or company name, you are doing business under a fictitious name.

So that consumers of business products and services know with whom they're dealing, Florida law requires any business operating under a fictitious name to register that name with the Florida Department of State. The only exceptions are businesses operated in the practice of their profession by attorneys licensed by the Florida Bar and by professionals licensed by the Florida Department of Business and Professional Regulation.

Registration requires the filing of an Application for Registration of Fictitious Name with the Florida Department of State, accompanied by a \$50 filing fee. The form and payment can be completed online at the Department's website. The Division of Corporations further provides public access assistance at phone (850) 245-6939.

A fictitious registration is good for five years, unless you sell your business and the new owner wants to use the same fictitious name. They will need to reregister it under their own name within 30 days after buying your business.

What happens if you don't comply? Technically, it's a second-degree misdemeanor. You could be fined up to \$500 and thrown in jail for up to 60 days. However, it's a pretty safe bet the state attorney's office has far better things to do than prosecute you for this type of offense.

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The more pragmatic penalty is that your business won't be allowed to maintain any court actions until you register. If you get into any disputes with customers or suppliers, you won't be able to take your dispute to court without registering first, although you will be able to defend yourself in court if you are sued. Even if you don't register, contracts and agreements that you enter into concerning your business will still be valid and binding (although you can't enforce them in court without registering).

Keep in mind that registration of your fictitious name in Florida is for purposes of public notice only. It does not reserve your name against future uses or protect it from competitors who may wish to use the same name. If you want to protect your name from competitors, you will need to independently register the name under state or federal law, or both.

The Florida Department of State has a separate office which handles registration of trade names, trademarks and service marks at the state level. The U.S. Patent and Trademark Office handles registration of trademarks used in interstate commerce. Both procedures are fairly complex and should be handled only with the advice of an attorney who is experienced in trademark registration.

Gary M. Kaleita is a shareholder at Lowndes and has been certified by the Florida Bar as a specialist in real estate law since 1993. He can be reached by phone at 407-418-6334 or gary.kaleita@lowndes-law.com. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.