

CHAPTER 5 - FICTITIOUS NAMES

I. OVERVIEW

No person (as defined in Va. Code § 1-230), partnership, limited liability company or corporation shall conduct or transact business in this Commonwealth under any assumed or fictitious name until they file a certificate in the Circuit Court Clerk's office in the county or city in which their business is conducted. Va. Code § 59.1-69. See also Attorney General Opinion to Frey dated 6/12/00, page 233, 234; *Foreign business trusts are recognized in Commonwealth; may file fictitious name certificate in Virginia. No requirement that foreign business trust obtain certificate of authority or certificate of registration from State Corporation Commission before filing fictitious name certificate. Statutory agent for foreign business trust filing such certificate with circuit court clerk is resident practicing attorney appointed to receive legal process and enter appearance in Virginia courts.* The person, partnership, limited liability company or corporation shall sign and acknowledge this certificate setting forth:

- Name under which business is to be conducted or transacted;
- Names of each person, partnership, limited liability company or corporation owning the same;
- Post-office and residence addresses; and
- When (i) the partnership or limited liability company is a foreign limited partnership or limited liability company, the date of the certificate of registration to transact business in this Commonwealth issued to it by the State Corporation Commission, or (ii) when the corporation is a foreign corporation, the date of the certificate of authority to transact business in this Commonwealth issued to it by the State Corporation Commission.

If a Corporation or limited partnership files such a certificate because it is using an assumed name, it must obtain a certified copy of the assumed name certificate from the Circuit Court Clerk and forward it to the State Corporation Commission. Va. Code § 59.1-70.

The Clerk with whom the certificate is filed shall keep a book or recording by microphotographic or electronic processes (Va. Code § 17.1-240) in which all such certificates shall be recorded, with their date of record, and the clerk shall keep a register in which shall be entered in alphabetical order the name under which every such business is conducted and the names of every person owning the same. The fee for filing such a certificate is prescribed in Va. Code §§ 17.1-275 (A)(37) and 59.1-74, which is \$10.00 as of this writing. No business license shall be issued by the Commissioner of Revenue until the certificate is recorded in the clerk's office.

Any person violating any of the foregoing requirements will be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$2,500 or by confinement in jail for not more than one year, or both. Va. Code § 59.1-75.

Effective July 1, 2002, Va. Code §§ 59.1-71 and 59.1-72 are repealed which means any such business owners who do not reside in the county or city where the business is conducted **NO LONGER** must appoint a Virginia practicing attorney-at-law who resides in the Commonwealth as its attorney or agent for service of process. This also removes the requirement that the service of process is to be made upon the clerk if no such attorney in fact has been appointed.

There is no statutory requirement to provide notice of expiration of an assumed, but some owners will request such a form.

II. PARTNERSHIPS

In 1997, the Virginia General Assembly eliminated the requirement that Partnership certificates be recorded in the Circuit Court Clerk's office.

NOTES:

- Per Va. Code § 50-73.83 (B), an authenticated copy of a partnership certificate may be recorded in the clerk's office.
- Va. Code § 59.1-69 (fictitious name; mandatory filing)
- Per Va. Code § 13.1-781, a certificate of the type set out in the statute may be admitted to record in the deed book of the recording office within the jurisdiction of which any real estate of the partnership is located. A filing fee of \$10.00 is authorized.

See also Attorney General Opinion to Ergenbright dated 12/9/2002 (2002, page 285); Commissioner of revenue may release names and addresses of businesses licensed within his locality for purposes of solicitation. Business is considered trading under assumed or fictitious name when assumed or fictitious name certificate is filed in appropriate clerk's office.

III. CORPORATE CHARTERS AND LIMITED PARTNERSHIPS

In 1988, the Virginia General Assembly eliminated the requirement that Corporate Charters and Notices of Registered Agents of Corporations be recorded in the Circuit Court Clerk's office.

In 1991, the requirement to register limited partnership certificates in the Circuit Court Clerk's office was also eliminated.

In 2007, the requirement to record a certificate that recites the change of: (i) name of any domestic or foreign limited partnership, (ii) a general partnership is converted to limited partnership form, or (iii) a limited partnership is converted to general partnership, be recorded in the deed books was eliminated.

Virginia Code § 59.1-69 states: that "no person, partnership, limited liability company or corporation shall conduct or transact business in this Commonwealth under any assumed or

fictitious name unless such person, partnership, limited liability company or corporation shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted, and the names of each person, partnership, limited liability company or corporation owning the same, with their respective post-office and residence addresses (and, (i) when the partnership or limited liability company is a foreign limited partnership or limited liability company, the date of the certificate of registration to transact business in this Commonwealth issued to it by the State Corporation Commission, or (ii) when the corporation is a foreign corporation, the date of the certificate of authority to transact business in this Commonwealth issued to it by the State Corporation Commission), and file the same in the office of the clerk of the court in which deeds are recorded in the county or city wherein the business is to be conducted.

No person, partnership, limited liability company or corporation shall use an assumed or fictitious name in the conduct of its business to intentionally misrepresent the geographic origin or location of any such person or entity.”

Virginia Code § 59.1-70 states:

“A. When business is conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under § 50-73.11, by a foreign limited partnership required to register with the Commission under § 50-73.54, or by a limited liability company or corporation, such domestic or foreign limited partnership, limited liability company or corporation shall file in the office of the clerk of the State Corporation Commission a copy of the certificate described in § 59.1-69, duly attested by the clerk of the court in which the original is on file. The State Corporation Commission shall charge a ten-dollar fee for the filing of a fictitious or an assumed name.

B. When business is no longer conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under § 50-73.11, by a foreign limited partnership required to register with the Commission under § 50-73.54, or by a limited liability company or corporation, the domestic or foreign limited partnership, limited liability company or corporation may file with the clerk of the State Corporation Commission a copy of a release certificate, duly attested by the clerk of the court in which the certificate is on file. The Commission shall charge a ten-dollar fee for the filing of such certificate.”

IV. RECORDING FICTITIOUS NAMES

The following are recommended procedures for recording a fictitious name:

Step 1 The business owner appears in the Clerk’s office to record a certificate of fictitious or assumed name.

Comments: He/she may already have a completed certificate prepared by his attorney. Most will ask for a blank form.

Step 2 The clerk provides a blank form if needed, and suggest that the owner review the alphabetic index to names already recorded to avoid duplication.

Step 3 Clerk can acknowledge the owner's signature on the completed form, accept payment, assign an instrument number, and record the certificate with the necessary validation stamps, page numbers, and signature according to the local practice for recordation.

Comments: Clerk's fee as of this writing is \$10.00 for filing and recording the certificate and entering such names in a register. Va. Code § 59.1-74.

NOTE: All purported owners should sign form prior to recordation.

Step 4 Clerk provides the owner with a payment receipt to take to the Commissioner of Revenue's office.

Comments: Some clerks provide additional copies based upon local practice.

Step 5 The clerk films or scans the certificate and indexes it and places it in a book according to local practice. See Va. Code § 59.1-74.

V. EXPIRATION OF FICTITIOUS NAME

When business is no longer conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under Va. Code § 50-73.11, by a foreign limited partnership required to register with the Commission under Va. Code § 50-73.54, or by a limited liability company or corporation, the domestic or foreign limited partnership, limited liability company or corporation may file with the clerk of the State Corporation Commission a copy of a release certificate, duly attested by the clerk of the court in which the certificate is on file. Va. Code § 59.1-70. The notice should be recorded for which the clerk would receive the applicable recordation fee.

VI. FORM(S)

Most clerks maintain their own fill-in-the-blanks forms.

a. Forms

CC-1050, CERTIFICATE OF ASSUMED OR FICTITIOUS NAME

b. Reference(s)

Va. Code §13.1-781

Va. Code § 50-73.83

Va. Code §§ 59.1-69 through 59.1-76

Va. Code §§ 17.1-275 (A)(2) and 17.1-275 (A)(37)

CERTIFICATE OF ASSUMED OR FICTITIOUS NAME

Commonwealth of Virginia

This is to certify that the below named person, partnership, limited liability company or corporation intends to conduct or transact business under an assumed or fictitious name in the [] City [] County of

1. The ASSUMED OR FICTITIOUS NAME of business

2. The above business is owned by the following entity type:

- [] SOLE PROPRIETORSHIP (Complete A below) [] PARTNERSHIP (Complete B below)
[] LIMITED LIABILITY COMPANY (Complete C below) [] CORPORATION (Complete C below).

A. NAME OF OWNER
RESIDENCE ADDRESS
POST OFFICE ADDRESS

B. NAME OF PARTNERSHIP
OFFICE ADDRESS
POST OFFICE ADDRESS

- (1) Is this a general partnership? [] NO [] YES. If YES, complete the Statement of Partners on Page Two of Two.
(2) Is this a domestic limited partnership? [] NO [] YES. If YES, a certified copy of this certificate must be filed with the State Corporation Commission. Va. Code § 59.1-70.
(3) Is this a foreign limited partnership? [] NO [] YES. If YES, indicate the date of the certificate of registration to transact business in the Commonwealth of Virginia issued by the State Corporation

Commission:
A certified copy of this certificate must be filed with the State Corporation Commission. Va. Code § 59.1-70.

C. NAME OF [] CORPORATION [] LIMITED LIABILITY COMPANY
OFFICE ADDRESS
POST OFFICE ADDRESS

- (1) A corporation or limited liability company must file a certified copy of this certificate with the State Corporation Commission. Va. Code § 59.1-70.
(2) Is this a foreign corporation or a foreign limited liability company? [] NO [] YES. If YES, indicate the date of the certificate of authority/registration to transact business in the Commonwealth of Virginia issued by the State Corporation Commission:

ACKNOWLEDGMENT

I certify that the foregoing is true and correct to the best of my knowledge and belief.

Sole Proprietorship NAME OF OWNER SIGNATURE OF OWNER
Partnership NAME OF GENERAL PARTNER SIGNATURE OF GENERAL PARTNER
Corporation NAME OF PRESIDENT SIGNATURE OF PRESIDENT
Limited Liability Company NAME OF MEMBER/MANAGER SIGNATURE OF MEMBER/MANAGER

[] City [] County of State/Commonwealth of

Subscribed and acknowledged before me, this day of, 20
by NAME TITLE

[] CLERK/DEPUTY CLERK [] NOTARY PUBLIC
Registration No.

My commission expires

CLERK'S OFFICE
Filed in the Clerks' Office of the Circuit Court on DATE

....., Clerk by, Deputy Clerk

STATEMENT OF PARTNERS

This is to certify that the below named persons intend to carry on business under an assumed or fictitious name as partners in the
[] City of [] County of , and
that the following is a list of every person owning the GENERAL PARTNERSHIP set forth on the front of this certificate.

.....
PRINTED NAME (LAST, FIRST, MIDDLE)

.....
SIGNATURE

.....
RESIDENCE ADDRESS

[] City [] County of State/Commonwealth of

Subscribed and acknowledged before me this day of, 20.....

by
NAME TITLE

My commission expires

.....
[] NOTARY PUBLIC [] CLERK/DEPUTY CLERK
Registration No.

.....
PRINTED NAME (LAST, FIRST, MIDDLE)

.....
SIGNATURE

.....
RESIDENCE ADDRESS

[] City [] County of State/Commonwealth of

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NAME TITLE

My commission expires

.....
[] NOTARY PUBLIC [] CLERK/DEPUTY CLERK
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