

## OCTOBER MIN-E-NEWS DAILY COLUMN FROM START DATE TO END OF MONTH

23rd

Yesterday, a client from Pittsburgh asked if it is permissible to use "CPA" in the name on a fictitious name registration.

In our FAQ section, we address the use of CPA in our Name Availability topic generally, but did not (until now) address this specific question. The answer, which is now in FAQ for future reference, is that it is permissible so long as the registering company is a "professional" corporation or a "restricted professional LLC." This answer was provided by the supervisor in the filing section at the Bureau.

24th

Fictitious Name Registrations are provided for in Title 54, Chapter 3 not Title 15 where the Business Association Act resides.

In PA, doing business without properly registering a fictitious name can result in a fine of \$500 and, if the company brought an action in a PA court, that action is subject to being dismissed if the name is not immediately registered and the fine paid. We have often been asked to take the clients \$500 check to the Corporation Bureau and file the FN registration. See our FAQ's to help you determine when a name is fictitious and when it is not but always refer to the statute to make your own determination. Section 331 deals with the penalties imposed for failure to comply. So, if your client has a business named Two Guys Pizza and it isn't registered, chances are quite good that they are in non-compliance with this section.

Remember, publications are also required for "individuals" registering a name. We can help with that process to save you and your staff time and effort.

25th

Yesterday we added an FAQ on the procedure for qualifying a foreign corporation when the company's name is not available for use in PA. See that FAQ for a more detailed discussion on this topic but essentially you will need to:<P>

- 1) Do business in PA under a fictitious name and register that name by using a Fictitious Name Registration form (see FAQ's and Forms);<P>
- 2) Prepare AND file a board resolution stating that the company has authorized the use of the fictitious name in PA (sample available in our Forms library);<P>
- 3) Prepare and file Certificate of Authority form with paragraph 3 completed;<P>
- 4) Prepare and file a Docketing Statement with paragraph 7 completed;<P>

Also, don't forget to send the documents to us for filing and to publish your qualification or to instruct us to do that for you thereby saving you time and hassle and for our inexpensive fees for these services, it is a win-win for you. <P>

The above procedure is not required for LLC's where all you do is put your d/b/a name in paragraph 2 of the Foreign Registration Form.<P>

Thank you....<p>

26th

Pennsylvania, being rooted in traditions of Old England and Common Law, and being of the original 13 Colonies (actually, I believe we were #2 to ratify the Declaration of Independence) still has some ancient holdovers as part of their Business Law. One of those is the publication of the creation OR dissolution of certain business ventures. <P>

First and foremost is the requirement to publish the filing (or intent to file) of your Articles of Incorporation. NOTE: LLC's/LP's are NOT required to publish (although it is highly recommend that you do purchase a LLC kit for reasons of Veil Piercing); <P>

Second, it is required to publish the Qualification to do business of a Foreign Corporation in Pennsylvania. <p>

Third, the filing of an Fictitious Name Registration by an INDIVIDUAL, is required to be published... even if that individual if a business entity is also registering on the same form (albeit, that is very rarely done and caution should be taken to avoid exposing the individual to personal liability if that individual is involved in the business entity also on the registration. <P>

Fourth, certain DISSOLUTIONS/WITHDRAWS, require publication of the company's resolution to dissolve OR withdraw from doing business (for corporations it is required immediately upon adoption of the resolution - See FAQ for statutory reference) <P>

The "proofs of publication" do NOT need to be filed with the state. They are to be kept in the company's official records. Because of this, we are often asked, "what will happen then if we don't publish?" The best answer I can give to that is twofold:<br>

1) There is, I am told (but have never seriously looked for it in the statutes) a declaration that if publication is required by law, the failure to publish results in the nulification of the act that is being published or at the very least renders that act incomplete. So, if you think you have a corporation, you probably don't and there may be no veil to pierce. This would be a good subject for a case note in a law review article don't you think Steve?; Alternatively;<br>

2) For Corporations there is the additional concern that a court will view the failure to publish as one of the staws use to determine if the corporate veil should be pierced.<br>

Also, don't forget to send the documents to us for filing and TO REQUEST US TO PUBLISH IF NEEDED, thereby saving you time and hassle and for our inexpensive fees for these services, it is a win-win for you. <P>

THE ABOVE INFORMATION IS NOT TO BE RELIED UPON... THE READER IS PRESUMED TO KNOW THE LAW AND SHOULD ALWAYS CHECK THE STATUTES HER/HIMSELF.

27th to 30th lost....

## **Wednesday 10-31 - Fictitious Names**

Don't forget, when switching a business from a sole proprietorship with a registered Fictitious Name you should consider either changing the ownership, i.e. the registrant on the fictitious name to the new LLC or Inc. that you are forming for the client, or canceling out the old FN. Leaving it around could expose the sole proprietor to liability if the new entity continues to trade under the name without the designator.

Example: Pop's Ice Cream registered to Joe Jones... now forms a new corporation. Joe has stationery, invoices and signs with just the FN name on them. To save money he continues to use them but never changes the old FN over to be registered by the we CORP. Query: Is he personally exposed?