

## **Walker County Clerk**

### **Frequently Asked Questions - About Assumed Names**

#### **Why do I need to file an Assumed Name Certificate?**

The Texas Business and Commerce Code require businesses to file assumed name certificate. Also, most banks will not allow a business checking account to be opened without a proper filing. It is merely a formal process that informs the public of the registered agent and where official contact with the business can be made.

#### **What if I plan to do business in multiple counties?**

If you are a non-corporate business, then you need to file an assumed name certificate(s) with each county in which you plan to conduct business. If you are a corporation, you need to file your assumed name certificate(s) in the county in which the corporation's registered office is located.

#### **Do I have to file an Assumed Name if I am only going to use the name I incorporated under?**

**No.** The name you incorporated under should be filed with the Secretary of State and can be used anywhere within the state of Texas without any additional filing requirements.

#### **What rights does an assumed name certificate give me?**

Neither the filing of an assumed name certificate nor the reservation or registration of a corporate name imparts any real protection to the party filing. It is merely a formal process that informs the general public who is the registered agent of a business and how official contact may be made.

#### **Then why do it?**

You want to properly file because you should be planning to establish a business with a positive image in the community. This image logically will need to be your business name. If you file, you notify others not to use it. Additionally, you have some recourse against someone coming along later trying to capitalize on your hard work.

#### **What if I am no longer using an assumed name for my business?**

If you have filed an assumed name certificate with either the secretary of state or with a county clerk and you are no longer conducting business under that assumed name, you may file a statement of abandonment.

#### **Should an Assumed Name be rejected if there is one on file for the same or similar name?**

**No.** Chapter 71 of the Texas Business & Commerce Code does not authorize rejection of an assumed name certificate on the basis of a name conflict. Therefore, there may be multiple assumed name certificates on file with the secretary of state. It is up to each business to protect its name and good will.

#### **Does your office monitor or verify that duplicate filings have not occurred?**

**No.** If a corporation and an unincorporated company have very similar names and there is a problem, neither automatically has the right to the name. If both parties have properly filed the assumed name the courts will most likely have to decide this matter. It is important to do a thorough search when considering a business name.

#### **I filed an assumed name but another business is using one that is similar to mine. What should I do?**

You should contact a private attorney about what steps can be taken to protect your business name. Filing an assumed name does not give you any right to use the assumed name in a way that violates the law, including the laws of unfair competition, unfair trade practices, copyright, and trademark. The secretary of state will file an assumed name certificate without determining what rights, if any; you have to use the name. Consequently, more than one person can have the same assumed name on file.

#### **I am using an assumed name, but have not made proper filings at state or county levels. Are there penalties?**

**Yes.** The Texas Business & Commerce Code sections 71.201, 71.202 provide for civil and criminal penalties for noncompliance with the assumed name provisions of Chapter 71.

#### **I have a limited partnership (LP) that is registered as an LLLP. How does the partnership file an assumed name certificate with the Secretary of State?**

When a limited partnership (LP) that has registered as a limited liability limited partnership (LLLP) uses an assumed name in Texas, the partnership must file two assumed name certificates with the secretary of state. The LP must file a certificate, and a second certificate must be filed for the LLLP registration.