

Practice Update

Florida Legislature Updates and Modernizes Florida's Fictitious Name Act

June 26, 2017

By Philip B. Schwartz and Andrew E. Schwartz

Florida Statute §865.09, known as the “**Fictitious Name Act**,” requires any person or entity doing business in Florida under a name other than the person’s legal name to register the alternate name, or “fictitious name”, with the Florida Department of State (the Department). Registration is intended to provide notice to anyone dealing with that business as to the real party in interest.

During the 2017 session, the Florida legislature amended the Florida Statutes to update and modernize that statute. The amended statute was developed and proposed by a committee of the Business Law Section of The Florida Bar (the authors of this client alert were active participants on that committee). The amended statute will become effective on July 1, 2017. A copy can be found [here](#).

The amendment makes a number of important changes to the Fictitious Name Act, as follows:

1. A person wishing to register a fictitious name must file what is now called a “registration” with the Department to register the fictitious name. Under subsection (3) of the Fictitious Name Act, as amended, the registration must include the following information:

Related People

Andrew Schwartz
Philip Schwartz

Related Work

Corporate

Related Offices

Fort Lauderdale

- A. The name to be registered;
- B. The mailing address of the business;
- C. The name and address of each registrant (registrant's are defined as the persons who register the fictitious name);
- D. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization, such entity must be in active status with the Department, provide its Florida document registration number and provide its federal employer identification number;
- E. Certification by at least one registrant that the intention to register the fictitious name has been advertised at least once in a newspaper in the county in which the principal place of business of the registrant is or will be located; and
- F. Any other information that the Department may reasonably deem necessary to be provided (as requested in the Department's forms).

Unlike current law, the registration of a fictitious name no longer requires a sworn statement, thereby removing the need for notarization of the statement. Further, the revised statute clarifies that with respect to a general partnership that is not registered with the Department, the partners are the registrants and not the partnership entity, and that with respect to a general partnership that is registered with the Department, the partnership is the registrant and must be in active status with the Department at the time the registration is filed.

1. The period in which a fictitious name registration is effective has been clarified. Consistent with the current statute, the period under which a fictitious name registration remains outstanding continues to be 5 years. However, under the

revised statute, the first year of registration is now defined as the year in which the registration was filed (even if that period is shorter than year), expiring on December 31st of the 5th calendar year, and any renewal of the registration is valid for a 5 year period beginning on January 1 of the year following the prior registration expiration date.

2. Under the current statute, a fictitious name may not contain the names “Corporation”, “Incorporated”, “Corp.” or “Inc.” unless the registered person is incorporated (as a Florida entity) or has obtained a certificate of authority (as a foreign entity) under Chapter 607 (the Florida Business Corporation Act) or Chapter 617 (the Florida Not For Profit Corporation Act), of the Florida Statutes. The revised statutes extends the same prohibitions on using words, abbreviations, or designations that are commonly used to reflect status as a Florida or foreign limited liability company, limited partnership, limited liability limited partnership, limited liability partnership, professional association, or professional limited liability company unless the business registering such name is actually that type of entity. These same rules also apply at the time of renewal of the registration if the entity type has changed since the initial registration. Further, an entity that previously filed a fictitious name using one of the newly prohibited words, abbreviations or designations will not be able to renew the existing registration using the prohibited name in the future.
3. Under current law, there is an exemption from the requirement to file a fictitious name for a corporation that does business under its own name. This exemption has now been extended to limited liability companies, partnerships, or other business entities that are organized or registered and in active status with the Department.
4. The revised statute clarifies that if a registrant ceases to engage in a business under a registered fictitious name, the registrant, within 30 days

after the cessation occurs, must file a cancellation of the fictitious name registration with the Department. The revised statute also provides that if the cessation is in connection with a transfer of the business, the transferee may register the name at the same time as the cancellation.

5. Consistent with prior law, the revised statute clarifies that if a person fails to comply with the statute, neither the business nor the person or persons engaged in the business may maintain any action, suit, or proceeding in any court of the State of Florida with respect to or on behalf of the business until this statute has been complied with. It also continues to provide that the failure of a business to comply with this statute does not impair the validity of any contract, deed, mortgage, security interest, lien or act of such business and does not prevent such person from defending any action, suit or proceeding in any court of this state.
6. Under the current statute, non-compliance with the statute is a misdemeanor in the second degree. Under the revised statute, a failure to comply with this statute is now a noncriminal violation.

Conclusion

The revisions to the Fictitious Name Act clarify the requirements for registering fictitious names in Florida, and modernize the statute to deal with the myriad of types of entities that now exist. If you have questions about how the revised Florida Fictitious Name Act may affect your business, please contact the authors or your Akerman attorney.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.