

How to Register your Business Name in Texas

State of Texas, Department of Commerce

Q. What happens if a corporation and a non-corporation have very similar names and there is a problem, does the corporation automatically win?

A. No. Neither automatically wins. If both parties have a properly filed assumed name certificate, then the courts will most likely have to decide the matter. Issues like *who was using the name first* becomes the center of focus.

Q. What if I plan to do business in multiple counties?

A. If you are a non-corporate business, then you need to file an assumed name certificate 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. If the registered office is different from your principal office, then you need to file the assumed name certificate in both counties.

Q. Do I have to file an Assumed Name Certificate if I am only going to use the name I incorporated under?

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

Q. What rights does an assumed name certificate give me?

A. 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.

Q. Then why do it?

A. Because the Texas Business and Commerce Code *requires* businesses to file assumed name certificates. But requirements aside, registering your name is smart business. Most banks will not allow you to open a business checking account without a proper filing. As far as borrowing money, you can rest assured; they will require a copy of this filing before any money changes hands. Also, 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. Therefore, if you file, you notify others not to use it. Additionally, if you file, you have some recourse against someone coming along later whose trying to capitalize on your hard work.

Q. Can you use your own name?

A. Yes you can, many people do.

Q. What if your company name is already reserved?

A. Consider another name.

Q. How different does the name have to be?

A. First, consider the reason for choosing the name in the first place. You want people to know whom you are and what you do so they will buy goods or services from you. Similar names create confusion. Choosing a name similar to someone else's could wind you up in a legal battle – costly and time consuming! Once the dispute is over, you may have to change your name anyway.

Background

Your objective should be to choose a name for your business that's unique..one that won't be confused with anyone else's company name. **If you are planning to operate as a Sole Proprietorship or a Partnership,** then you need to file an assumed name certificate for any name or deviation of that name that you plan to use. The certificate(s) should be filed with each county in which you plan to operate.

If you are planning to Incorporate – then the name you incorporate under is filed with the Secretary of State and reserved throughout the state. However, if you would like to be identified by another name as well, you need to file an assumed name certificate with each county in which you plan to operate.

Here's an example of why a corporation would file an assumed name certificate. Lets say the name you filed with the Secretary of State for your corporation is John Doe Incorporated. But, instead of this more formal name, you would like to put the name J. D. Interior Design on your business cards. Therefore, you need to file an assumed name certificate for each name you wish to go by other than the one you were incorporated under. The certificate(s) must be filed with the Secretary of State's office and each county in which you intend to conduct business.

An interesting fact for corporations, sole proprietorships and partnerships to consider: The Secretary of State will perform a name search to verify that no corporation in Texas is using the exact name you wish to use. However, they *do not* check the county filings. On the other hand, the county does not have the information for you to check your assumed name request against the state's incorporation records either. Let's muddy this situation further by saying that each county clerk's office has its own set of filings which do not include those from other counties.

So the question is, *"Is it possible that two businesses in the State of Texas use the exact same name?"* The answer is, *definitely Yes*".

So who has the right to use it? The first point is that two companies might use the same name in different geographic areas and therefore never have a problem. In this case, both can use the same name. If, however, problems arise, then whether it is a corporate name filed with the Secretary of State or an assumed name certificate filed with the local county clerk's office, this matter will most likely be settle in court.

Point to remember: Whoever filed the name first has a definite advantage. Note: To find out if a corporation is already using the name you have chosen, you can call the Secretary of State at 512-463-5555. Office personnel will normally do a computer search right then and tell you while you are on the phone if that name has been reserved.

How to file in your County.

First, jot down the name you plan to call your business. Write it exactly as you wish to see it..consider spaces, commas, periods, etc. **Second,** search the county records for that exact name in either the *Assumed Name Books or Computer*. *Some offices may only have computer terminals or books available or both.*

Ask for help if you need it!!

You searched through the filings (from books or computer) and did not find your company name anywhere.

Now, all that is left to be done is fill out your assumed name form, have it notarized and file it.

Oh No! You found your company name listed in the filings.

Before you give up, look in the margins of the listing or ask the clerk to check and see if the name may have been abandoned. If you find that the name has been abandoned, then you can use it. Remember, however, that you may be taking on some additional risks. As an example, tying into someone else's bad reputation could cost you some business, especially in the early going.

OK, I am ready to file!

Just fill out the form and give it to one of the staff members

Just fill out the form – more instructions to follow, the assumed names clerk will assist you and answer questions. The county will keep the original, you will leave with a certified copy. If you will need more than just the one certified copy ask the clerk and get them before you leave. A certified copy is **\$6.00 total, \$1.00 for the copy and \$5.00 for the clerk's certification.**

Helpful hints.

A filing is good for 10 years. Therefore you need to search the last 10 years assumed names index to verify the name you want. There are several terminals in the County Clerk's office to search or ask the assistance of the assumed name clerk.

Note: If you can wait a week or so and would rather pay someone else to do this for you, the county clerk's office will do the search for a \$5.00 search fee. *****The county clerk office has a strict policy of not doing searches over the phone***** Often, this whole process can be taken care of through the mail, ask the clerk for instructions.

Assumed name certificate form.

The form looks complicated but really isn't. More like "filling in the blanks". Be prepared to provide the following: Business name, address, and city, state and zip. **Be sure to have a legal non-expired ID!!**

Period of time. This is the period of time you plan to use the name. The answer is *normally 10 years* (that is the maximum length of time an assumed name filing is valid). However, if you are sure that you will use the name for a period less than 10 years, indicate so on the form.

Business type. Is your company a Corporation, Partnership, Sole Proprietorship, etc.? ***Don't bother asking the staff of the county clerk which one you are, they do not know. Additionally, they do not provide advice on legal issues such as this. That is between you, your accountant and/or your lawyer.***

Owner information. This includes the names of the owners, their personal addresses and signatures.
Note: *The signatures must be notarized, or attested to by a deputy clerk which is usually done in person.* Otherwise, just take the form with you. It cannot be filed until everyone has signed it and all signatures have been notarized.

The bottom line...it is the county clerk's job to file documents, not to insure they are legally correct.