

## **YOUR ASSUMED NAME CERTIFICATE MAY NOT BE WHAT YOU THINK IT IS\***

Now that you have filed your Assumed Name Certificate with the County Clerk's Office you may believe you are free to use that name for your business. But nothing could be further from the truth. In reality, an Assumed Name Certificate (or dba as it is called by most people) is for the protection of the public in dealing with your business. Chapter 36 of the Texas Business and Commerce Code sets out the requirements of Assumed Name Certificates.

The idea behind the Assumed Name Certificate is to give members of the public a central location to search for the owners of a business. If you are doing business as "Fred's Garage" and someone wants to know who owns Fred's Garage they look in the Assumed Name records. In almost any instance in which your business name is different from your last name, or doesn't include your last name, you need to file an Assumed Name Certificate.

If you are in a partnership, like "Smith and Jones" and you do business as "Smith's Furniture" you will need to file an Assumed Name Certificate so that members of the public know that someone besides just Smith is an owner. Similarly, if you do business as "Sanford & Son", "Sanford & Company", or "Sanford & Associates" you are required to file an Assumed Name Certificate to identify everyone other than Sanford involved in the ownership of the business, or to notify the public that there is no one **other** than Sanford involved.

And corporations sometimes need Assumed Name Certificates. The "Subway®" sandwich name is an example. The business is actually named "Doctor's Associates, Inc." but it does business as "Subway". As such, they need an Assumed Name Certificate (or some other legal mechanism) to allow members of the public to find out who runs the "Subway" sandwich shop.

## **YOUR RIGHT TO THE NAME YOU REGISTERED**

Once your Assumed Name Certificate is on file you still have no actual rights by virtue of the filing to use the business name. There may be another individual or company which has common law or statutory rights to the name, including Trademark or Service Mark holders. If your name is similar to an existing name and is likely to cause confusion to members of the public about who is offering the goods or services you may be responsible to the owner of the name for monetary damages or even subject to an injunction prohibiting your use of the name. And the simple act of filing is **not** sufficient to protect the priority of names. If you file a Certificate which identifies your use of a name but do not start the business until sometime later, any controversy about who used the name first will require you to show when you started using the name, not the date it was filed.

# FAILURE TO FILE AN ASSUMED NAME CERTIFICATE

## CIVIL CONSEQUENCES

Now that you have read this information and learned that the Assumed Name Certificate does not grant you any rights to the business name you've selected you might be inclined to save your money and forego filing the Certificate. But this decision could have serious consequences. While a business that fails to file an Assumed Name Certificate remains subject to civil actions (lawsuits) brought **against** the business, the law does **not** allow the business to bring an action against others. And if a suit is filed against the business, the court can require the owners of the business to reimburse the party bringing the lawsuit for the costs, including attorney's fees, incurred in locating the business owners and bringing them before the court.

## CRIMINAL CONSEQUENCES

And if the limitations on the business' right to bring a civil action against someone who, for instance, breaches a contract with the business, and the penalty of having to pay the expenses of someone who sues your business which is operated without an Assumed Name Certificate are not enough, there is also the potential for a two thousand and no/100 dollars (\$2000.00) fine for conducting a business under an assumed name without filing a Certificate when the business is required to do so. Texas Business & Commerce Code §36.26.

## CONCLUSION

This is just a small amount of the information which you are presumed by law to know. The old adage "Ignorance of the law is no excuse" still applies. In the new global economy and this age of International Trade Names, Internet web addresses and the like you are responsible for ensuring your compliance with all applicable state and Federal laws. Many small business owners find the task overwhelming and decide to hire an attorney to assist them through the legal maze before any problems come up. Others wait until an issue arises which requires expensive, immediate attention before frantically searching for an attorney to help them. Only you and your attorney can decide which choice is right for you and your business. I wish you success in all your endeavors.

\*This information is a general overview of the law regarding Assumed Names in Texas. It is not legal advice and is no substitute for consultation with an attorney regarding your specific legal matter. Do not rely on this document or the information contained herein in making decisions regarding legal matters.