



Home > Legal > Broker Practice Folder > Fictitious Business Names

Fictitious Business Names

find the article at: "<http://www.car.org/legal/broker-practice-folder/fictitious-business-names/>"

Member Legal Services

Tel. (213) 739-8282

Fax (213) 480-7724

Aug. 20, 2013 (revised)

Table of Contents

- I. Fictitious Business Names
- II. Choosing a Fictitious Business Name
- III. Filing a Fictitious Business Name Statement
- IV. Publication of Fictitious Business Name Statement
- V. Renewal, Amendment and Abandonment of Fictitious Business Names
- VI. Real Estate Brokers Using Fictitious Business Names
- VII. Team Names

I. Fictitious Business Names

Q 1. What is a "fictitious business name"?

A A "fictitious business name" is the name a person uses to conduct business if that person is not using his or her own legal name. (Cal. Bus. & Prof. Code § 17900.) For example, if John Doe runs a sole proprietorship under the name "ABC Real Estate" rather than as "John Doe Real Estate," he is using a fictitious business name.

For rules regarding fictitious names for sole proprietorships, partnerships, corporations, and other business structures, see Questions 3-8.

A business using a fictitious business name can accept payments, advertise and otherwise communicate under that name. Using a fictitious business name also permits a single legal entity such as a corporation or an LLC to operate multiple businesses without creating a new legal entity for each business.

Q 2. What must a person or entity do if he/she/it wants to use a fictitious business name?

A To use a fictitious name in business, the person or entity must file a fictitious business name

statement with the local county clerk. (Cal. Bus. & Prof. Code § 17900(a)(1).) Then, the person or entity must publish the statement in a public newspaper in the same county. (Cal. Bus. & Prof. Code § 17917.)

For more information on the filing process, see Questions 9 – 15. For more information on the publication process, see Questions 16 - 19.

II. Choosing a Fictitious Business Name

Q 3. Can any name be used as a fictitious business name?

A No. There are rules which limit the names a particular business may use. The rules differ depending on the structure of the business (e.g., sole proprietorship, partnership or corporation).

For the specific rules and examples, see Questions 4-8.

When selecting a fictitious business name, it is also helpful to conduct a name search in the county where the fictitious name is being registered to ensure that the chosen name is not already being used. This website provides links to all the online fictitious business name databases in California: <http://www.coordinatedlegal.com/fbn.html>. If a county does not have an online database, try contacting that county clerk's office.

Q 4. What are the fictitious business name rules for a sole proprietorship?

A In the case of an sole owner, "fictitious business name" means a name that does not include the surname (last name) of the individual or a name that suggests the existence of additional owners (Cal. Bus. & Prof. Code § 17900(b)(1) and (c)).

FICTITIOUS BUSINESS LICENSE NOT REQUIRED

Example One: If John Doe conducts business under the name "Doe Housing," he does not need a fictitious business name license.

Example Two: If John Doe conducts business under the name "John Doe Realty" or "Doe Realty," he does not need a fictitious business name license.

Example Three: In *Kohler v. Stephenson*, 39 Cal. App. 374 (1919), the "Kohler Steam Laundry" was owned and managed by a person named Lottie A. Kohler. The court held that since she was the sole owner, the name was not fictitious and no certificate was required to be filed.

FICTITIOUS BUSINESS LICENSE IS REQUIRED

Example Four: If John Doe conducts business under the name "Doe and Sons," he needs a fictitious business name license.

Example Five: If Lottie Kohler uses the business name "Kohler Steam Laundry Company" or "Kohler Steam Laundry & Company," she needs a fictitious business name license.

Example Six: If John Doe conducts business under the name "John Doe Realty Company" or "Doe

and Company,” he needs a fictitious business name license.

Adding the words “and Sons” or “Company” implies the existence of additional owners and, thus, requires a fictitious business name license (Cal. Bus. & Prof. Code § 17900(b)(1) and (c)).

Q 5. What are the fictitious business name rules for a partnership?

A In the case of a partnership, “fictitious business name” means a name that does not include the last names of all the general partners or a name that suggests the existence of additional owners. (Cal. Bus. & Prof. Code § 17900(b)(2).)

FICTITIOUS BUSINESS LICENSE NOT REQUIRED

Example One: If Aaron Adams, Bob Brown and Carol Cooke are the general partners in a partnership, a name such as “Adams, Brown & Cooke Investment Group” would not be considered fictitious because it includes the last names of all three general partners. Thus, a fictitious business name license would not be required.

FICTITIOUS BUSINESS LICENSE IS REQUIRED

Example Two: If the three partners in Example One above wanted to conduct business under the name “ABC Housing” or “Adams & Brown Realty Group,” the partnership would need to file either of those names for a fictitious business name license because they do not contain all three last names of the partners.

Example Three: If the three partners in Example One above wanted to use the name “Adams, Brown, Cooke & Company,” they would now need a fictitious business name license. Adding the words “& Company” requires a fictitious business name license because it suggests the existence of additional owners (or partners).

These rules apply to all partnerships or other unincorporated associations with the exception of registered limited partnerships. For rules regarding limited partnerships, see Question 6.

Q 6. What are the fictitious business name rules for a limited partnership?

A For a registered limited partnership, a fictitious business name license is required if any name other than the name of the limited partnership as on file with the California Secretary of State is used (Cal. Bus. & Prof. Code § 17900(b)(4)).

These rules apply to limited partnerships registered in California and to foreign limited partnerships that have filed an application for registration with the California Secretary of State (Cal. Bus. & Prof. Code § 17900(b)(4)).

Q 7. What are the fictitious business name rules for a limited liability company?

A For a limited liability company, a fictitious business name license is required if any name other than the name stated in its articles of organization (and in the case of a foreign limited liability any name other than the name of the limited liability company as on file with the California Secretary of

State) is used (Cal. Bus. & Prof. Code § 17900(b)(5)).

The fictitious business name of a limited liability company may not suggest a business structure different from a limited liability company (Cal. Bus. & Prof. Code § 17910.5(b)).

Q 8. What are the fictitious business name rules for a corporation?

A For a corporation, a fictitious business name license is required if any name different from the name on its articles of incorporation (as filed with the California Secretary of State) is used (Cal. Bus. & Prof. Code § 17900(b)(3)).

For example, if a corporation is registered with the Secretary of State as “I-Beam Housing, Inc.” and it chooses to conduct business under the name “S-Beam Housing, Inc.” then it must register that fictitious business name.

The fictitious business name of a corporation may not suggest another business structure (Cal. Bus. & Prof. Code § 17910.5(a)).

These rules apply to both domestic and foreign corporations (Cal. Bus. & Prof. Code § 17900(b)(3)).

III. Filing a Fictitious Business Name Statement

Q 9. What is a fictitious business name statement?

A A fictitious business name statement is a document that states a person or entity is conducting business under a fictitious name (Cal. Bus. & Prof. Code § 17913). Certain persons or entities conducting business under a fictitious name are required to file such a statement with the clerk of the county where that person or entity has his/her/its principal place of business (Cal. Bus. & Prof. Code § 17915). Click here for a [Sample Fictitious Business Name Statement](#). ■

For more information on who must file a statement, see Question 10.

The filing of the statement makes it public record allowing the public to identify the persons or entity doing business under that fictitious name (Cal. Bus. & Prof. Code § 17900). The filing also gives the person or entity who filed it a rebuttable presumption that he/she/it may use the fictitious name exclusively in that area. (Cal. Bus. & Prof. Code § 14411).

Q 10. Who must file a fictitious business name statement?

A Every person or entity which regularly does business under a fictitious name in California for profit must file a certificate with the county clerk (Cal. Bus. & Prof. Code § 17910).

Nonprofit corporations and associations, such as churches, labor unions, and charitable organizations are exempt from this rule (Cal. Bus. & Prof. Code § 17911). Real estate investment trusts are also exempt (Cal. Bus. & Prof. Code § 17912).

Q 11. What information must be provided in the fictitious business name statement?

A The fictitious business name statement must include the names of the person(s) or entity conducting business, that person's or entity's address, the fictitious name and the address of the place of business (Cal. Bus. & Prof. Code § 17913 (b)). The form must also be signed by a specific person or officer of the entity, assuring that the information in the statement is true (Cal. Bus. & Prof. Code § 17914). For more information on who must sign the form, see Question 12.

The state of California does not provide a standard form, but does require the statement to follow a certain format. Click here for a [Sample Fictitious Business Name Statement](#). ■

Q 12. Who must sign the fictitious business name statement?

A The law varies on who must sign the fictitious business name statement depending on who is filing the statement. If the filing is on behalf of:

- an individual, then the individual must sign
- husband and wife, then either husband or wife must sign
- a partnership, then any general partner may sign
- a limited liability company, then a manager or officer may sign
- a trust, then the trustee may sign
- corporation, then any officer may sign.

(Cal. Bus. & Prof. Code § 17914.)

Q 13. When must the fictitious business name statement be filed?

A The statement must be filed within 40 days from the time the person or entity began using the fictitious name for business transactions (Cal. Bus. & Prof. Code § 17910).

Q 14. What must the person or entity do to "file" the fictitious business name statement?

A The person or entity (called the "registrant") must bring two copies of the statement to the county clerk and pay a filing fee. If the clerk accepts the statement, he or she will certify the statement and send a copy to the registrant. Then, the statement is considered filed. (Cal. Bus. & Prof. Code § 17916.)

Q 15. Once a fictitious business name statement is filed, is it valid forever?

A No. The fictitious business name statement is valid for 5 years from the date it was filed with the county clerk (Cal. Bus. & Prof. Code § 17920(a)).

If any changes occur in the information provided on the fictitious business name statement, the statement expires 40 days after the change takes place. (Cal. Bus. & Prof. Code § 17920(b).) Changes that trigger expiration include new owners or a new address for the business. However, a change in the residential address (not the business address) of individuals listed on the statement would not cause the statement to expire.

A fictitious business name statement may be renewed or amended to prevent expiration. For more information on these processes, see Questions 20-22.

IV. Publication of Fictitious Business Name Statement

Q 16. *What happens after a person or entity files a fictitious business name statement?*

A After filing the fictitious business name statement with the county clerk, the person or entity must publish the statement in a newspaper of general circulation in that county to place the public on notice of the fictitious business name (Cal. Bus. & Prof. Code § 17917).

The person or entity must then file an affidavit with the county clerk certifying that the statement was published. This filing must be done within 30 days of the last publication. (Cal. Bus. & Prof. Code § 17917(d).)

Q 17. *When must the person or entity publish the fictitious business name statement?*

A The statement must be published within 30 days after the fictitious business name statement is filed with the county clerk (Cal. Bus. & Prof. Code § 17917).

Q 18. *Where must the fictitious business name statement be published?*

A The statement must be published in a newspaper of general circulation in the same county where the statement was filed. If that county does not have a newspaper, the statement must be published in a newspaper of general circulation in the neighboring county. (Cal. Bus. & Prof. Code § 17917.)

Q 19. *How often must the person or entity publish the fictitious business name statement?*

A The publication must run at least once a week for 4 consecutive weeks (Cal. Gov. Code § 6064).

V. Renewal, Amendment and Abandonment of Fictitious Business Names

Q 20. *How does a person or entity renew a fictitious business name statement?*

A If a person or entity already filed a fictitious business name statement and wishes to use the same name beyond the 5-year period the statement is valid for, he/she/it must re-file that statement with the county clerk following the steps set out in Question 14 (Cal. Bus. & Prof. Code § 17910(c)). The statement should be re-filed before the previous statement expires. In some counties, the fee for re-filing is lower than the fee for the first filing.

If the information in the statement has not changed from the initial filing, then it need not be published (Cal. Bus. & Prof. Code § 17917).

Q 21. *How does a person or entity amend a fictitious business name statement?*

A If a change occurs in the information on the fictitious business name statement, a new, accurate statement must be filed with the county clerk to prevent the statement from expiring (Cal. Bus. & Prof. Code § 17910(b)). This process is the same as filing for the first time (described in Question 14.) This new statement must be published in a newspaper of general circulation in that county under the same rules described in Questions 17-19. (Cal. Bus. & Prof. Code § 17917(c).)

In the very specific instance of a general partner withdrawing from a partnership, rather than re-filing a fictitious business statement, the general partner must file a statement of withdrawal (Cal. Bus. & Prof. Code § 17923).

Q 22. *If a person or entity no longer wishes to use a fictitious business name, what must he/she/it do?*

A If a person or entity chooses to stop using a fictitious business name within the 5 years the name is valid, he/she/it should execute a statement of abandonment of use of fictitious name. (Cal. Bus. & Prof. Code § 17922.)

The statement should include:

1. The fictitious name being abandoned,
2. The address of the business,
3. The date, filing number and county where the fictitious name was registered, and
4. The names and contact information of the individuals who were on the original statement (either the owners, partners, officers or trustees).

(Cal. Bus. & Prof. Code § 17922(b).)

The statement should be filed with the clerk of the same county where the fictitious business name was originally filed. (Cal. Bus. & Prof. Code § 17922.) It must also be published in the same manner as the original filing (see Questions 17-19.)

VI. Real Estate Brokers Using Fictitious Business Names

Q 23. *May a real estate broker do business under a fictitious business name?*

A Yes. An individual real estate broker or a corporation licensed as a real estate broker may do business under a fictitious business name. To do so, he/she/it must obtain an additional license from the BRE issued under the fictitious name. (Cal. Code Regs. tit. 10, § 2731.)

This additional BRE license must be obtained before the fictitious name is used in real estate transactions that require a license (Cal. Bus. & Prof. Code § 10159.5).

Q 24. *How does a real estate broker obtain a license from the BRE under a fictitious name?*

A To obtain a real estate license issued under a fictitious business name, the individual or corporation must submit the appropriate license application and fee to the DRE along with a certified copy of the broker's fictitious business name statement published as required by law and filed with

the county clerk (Cal. Bus. & Prof. Code § 10159.5, Cal. Code Regs. tit. 10, § 2731).

Q 25. Can the BRE deny a fictitious business name license to a real estate broker?

A Yes. The issuance of a license under a fictitious name is not automatic. The BRE may deny the license if the fictitious name:

1. is misleading or would constitute false advertising,
2. implies a partnership or corporation when a partnership or corporation does not exist,
3. includes the name of a real estate salesperson,
4. violates various specific statutes regarding the publication and filing of fictitious business names,
5. is the name formerly used by a licensee whose license has since been revoked, or
6. contains the word or designation "bank," "banker," "trust," "trustee," "trust company," "insurance" or "assurance," "escrow," or "savings."

(Cal. Code Regs. tit. 10 § 2731.)

(Item #6 is not included in Reg 2731 but is included in the list in the BRE Online Reference Book, Chapter 1, at p. 14 <http://www.bre.ca.gov/files/pdf/refbook/ref01.pdf>)

Q 26. Can a real estate salesperson obtain a fictitious business name?

A No. A fictitious business name may only be obtained by a broker. (Cal. Code Regs. tit. 10, § 2731.)

Q 27. May a salesperson use a fictitious business name that has been obtained by the broker in his or her real estate activity?

A Yes, if the broker authorizes the salesperson to do so.

VII. Team Names

Q 28. Can a salesperson use a "team name" which includes a salesperson's name such as the "Brown team" or the "Nguyen group" in advertising?

A Yes. Many salespersons work together in teams, often under the lead of a specific salesperson, and use a "team name," such as the "Brown team" or "Jose Perez and Associates." Salespersons often want to use that "team name" in their advertising. The BRE in the past has not permitted such "team names" as the BRE generally would not allow fictitious names which contained a salesperson's name (see question 25). However, in the BRE's spring 2013 Real Estate Bulletin (http://www.bre.ca.gov/files/pdf/reb/rebspring_13.pdf), the BRE wrote that it will approve fictitious business names for "team names" which contain a salesperson's name and not the broker's name as long as certain requirements are met and furthermore that if a team name is approved, when used by a licensee, certain advertising rules must also then be followed.

Q 29. What are the requirements for a "team name" to be approved by the BRE?

A According to the BRE's Spring 2013 bulletin, the BRE will approve a "team name" containing a salesperson's name when all of the following four requirements are met:

- The fictitious name is submitted by the broker;
- The fictitious name is filed with the county clerk where the broker's main office is located;
- The salesperson whose name is included in the DBA is currently employed by the broker submitting the fictitious name; and
- The DBA includes the term, "team," "associates," "group," or any other term that implies the existence of a team as deemed appropriate by the BRE.

Q 30. *If a team "name" is approved are their special rules for utilizing that name?*

A If a "team name" is approved then most advertisements with a "team name" must prominently disclose the name and license number of the employing broker, as well as the license number of the salesperson utilizing the team name. This would include business cards, flyers, emails, radio ads and For Sale signs

Q 31. *Where can I obtain more information?*

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, CA 90020

The information contained herein is believed accurate as of August 20, 2013. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Sanjay Wagle, Esq.

Copyright© 2013 CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). Permission is granted to C.A.R. members only to reprint and use this material for non-commercial purposes provided credit is given to the C.A.R. Legal Department. Other reproduction or use is strictly prohibited without the express written permission of the C.A.R. Legal Department. All rights reserved.

