

## Chapter 2 Conducting Business Under Assumed Name

### **42-2-5 Certificate of assumed and of true name -- Contents -- Execution -- Filing -- Notice.**

- (1) For purposes of this section, "filed" means the Division of Corporations and Commercial Code has:
  - (a) received and approved, as to form, a document submitted under this chapter; and
  - (b) marked on the face of the document a stamp or seal indicating:
    - (i) the time of day and date of approval;
    - (ii) the name of the division; and
    - (iii) the division director's signature and division seal, or facsimiles of the signature or seal.
- (2) A person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, shall:
  - (a) file with the Division of Corporations and Commercial Code a certificate setting forth:
    - (i) the name under which the business is, or is to be carried on, conducted, or transacted;
    - (ii) the full true name, or names, of the person owning, and the person carrying on, conducting, or transacting the business; and
    - (iii) the location of the principal place of business, and the street address of the person; and
  - (b) designate, in accordance with Subsection 16-17-203(1), and maintain a registered agent in this state.
- (3) A certificate filed under this section shall be:
  - (a) executed by the person owning, and the person carrying on, conducting, or transacting the business;
  - (b) filed not later than 30 days after the time of commencing to carry on, conduct, or transact the business; and
  - (c) submitted in a machine printed format.
- (4) A certificate filed with the Division of Corporations and Commercial Code under this chapter shall include the following notice in a conspicuous place on the face thereof:

NOTICE - THE FILING OF THIS APPLICATION AND ITS APPROVAL BY THE  
DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE THE  
USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE RIGHTS  
OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE UTAH CODE ANN.  
SECTIONS 42-2-5 ET SEQ.).
- (5)
  - (a) A certificate filed under this section shall include a portion that allows the person filing the form to voluntarily disclose the gender and race of one or more owners of the entity for which the filing is made.
  - (b) Race shall be indicated under Subsection (5)(a) by selecting from the categories of race listed in 15 U.S.C. Sec. 631(f).
  - (c) A person is not required to provide information under Subsection (5)(a) concerning the gender or race of one or more owners of the entity for which the filing is made.
  - (d)
    - (i) The Division of Corporations and Commercial Code shall compile information concerning the gender or race included on certificates filed with the Division of Corporations and Commercial Code.

- (ii) Information compiled by the Division of Corporations and Commercial Code under Subsection (5)(d)(i) may be compiled in a manner determined by the Division of Corporations and Commercial Code by rules made pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6) A person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section 16-17-206.

Amended by Chapter 341, 2015 General Session

**42-2-6 Change in persons transacting business under assumed name.**

An amended certificate shall be filed with the Division of Corporations and Commercial Code not later than 30 days after any change in the person or persons owning, carrying on, conducting, or transacting such business or a change in the registered agent or office of the business or in any information required to be filed with the Division of Corporations and Commercial Code under this act.

Amended by Chapter 66, 1984 General Session

**42-2-6.6 Assumed name.**

- (1) The assumed name:
  - (a) may not contain any word or phrase that indicates or implies that the business is organized for any purpose other than one or more of the purposes contained in its application;
  - (b) shall be distinguishable from any registered name or trademark of record in the offices of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection (2);
  - (c) without the written consent of the United States Olympic Committee, may not contain the words:
    - (i) "Olympic";
    - (ii) "Olympiad"; or
    - (iii) "Citius Altius Fortius";
  - (d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:
    - (i) "university";
    - (ii) "college"; or
    - (iii) "institute" or "institution"; and
  - (e) an assumed name authorized for use in this state on or after May 1, 2000, may not contain the words:
    - (i) "incorporated";
    - (ii) "inc."; or
    - (iii) a variation of "incorporated" or "inc."
- (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:
  - (a) Subsection 16-6a-102(26);

- (b) Subsection 16-6a-102(35);
  - (c) Subsection 16-10a-102(11); or
  - (d) Subsection 16-10a-102(20).
- (3) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:
- (a) the name is distinguishable from one or more of the names and trademarks that are on the division's records; or
  - (b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if it is not in English.
- (5) The Division of Corporations and Commercial Code may not approve an application for an assumed name to any person violating this section.
- (6) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.
- (7) A name that implies by any word in the name that it is an agency of the state or of any of its political subdivisions, if it is not actually such a legally established agency, may not be approved for filing by the Division of Corporations and Commercial Code.
- (8) Section 16-10a-403 applies to this chapter.
- (9)
- (a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.
  - (b) On or after January 1, 1999, any person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).

Amended by Chapter 240, 2015 General Session

**42-2-7 Index -- Fees -- Evidence.**

- (1) The Division of Corporations and Commercial Code shall:
- (a) keep an active alphabetical index of all persons filing the certificates provided for in this chapter; and
  - (b) collect the required indexing and filing fees.
- (2) A copy of any such certificate certified by the Division of Corporations and Commercial Code shall be presumptive evidence of the facts contained in the certificate.

Amended by Chapter 222, 1988 General Session

**42-2-8 Expiration of filing -- Notice -- Removal from active index.**

A filing under this chapter shall be effective for a period of three years from the date of filing. At the expiration of that period, if no new filing is made by or on behalf of the person who made the original filing, the Division of Corporations and Commercial Code shall send a notice by regular mail, postage prepaid, to the address shown in the filing indicating that it has expired. If no new filing is made within 30 days after the date of mailing the notice, the Division of Corporations and Commercial Code shall remove the name from the active alphabetical index, and place it on a permanent inactive alphabetical index.

Amended by Chapter 66, 1987 General Session

**42-2-9 Corporate names, limited liability company names, and trademark, service mark, and trade name rights not affected.**

- (1) This chapter does not affect or apply to any corporation organized under the laws of any state if it does business under its true corporate name.
- (2)
  - (a) This chapter does not affect the statutory or common law trademark, service mark, or trade name rights granted by state or federal statute.
  - (b) An act listed in Subsection (2)(c) of itself does not authorize the use in this state of an assumed name in violation of the rights of another as established under:
    - (i) this chapter;
    - (ii) Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks Act;
    - (iii) the state law relating to names of corporations, partnerships, and other legal business entities;
    - (iv) the federal Trademark Act of 1946, 15 U.S.C. Section 1051 et seq.; or
    - (v) the common law, including rights in a trade name.
  - (c) Subsection (2)(b) applies to:
    - (i) a filing under this chapter;
    - (ii) an approval by the Division of Corporations and Commercial Code pursuant to this chapter; or
    - (iii) the use of an assumed name.
- (3) This chapter does not affect or apply to any limited liability company doing business in this state under its true name.

Amended by Chapter 318, 2002 General Session

**42-2-10 Penalties.**

Any person who carries on, conducts, or transacts business under an assumed name without having complied with the provisions of this chapter, and until the provisions of this chapter are complied with:

- (1) shall not sue, prosecute, or maintain any action, suit, counterclaim, cross complaint, or proceeding in any of the courts of this state; and
- (2) may be subject to a penalty in the form of a late filing fee determined by the division director in an amount not to exceed three times the fees charged under Section 42-2-7 and established under Section 63J-1-504.

Amended by Chapter 183, 2009 General Session