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**Article: A guide to opening a business in California, Part 2**

**By:** Christopher A. Kerosky

Last month, I began publishing a series of articles on the process of starting and managing a business in California. This is intended to provide the reader with a step-by step guide through the primary tasks necessary to legally register your business and start operations in this state.

Here's Part 2 on Registering your business name.

**Second Step: Registering your trade name or “fictitious business name”.**

Once you've set up a business and named it, you may wish to open a bank account and start making money. Opening a bank account itself is a simple process in California; essentially, you go to the bank, spend an hour or less with an account officer of the bank, and fill out some forms required, and in a few days, your first set of checks come in the mail. However, there are several steps required before the bank will allow you to open an account.

One is you need to let the government know what name you are using. That is, if you are not using your own name in the business, but rather a trade name or “fictitious name”, it may be necessary to register that name with the County in which you do business. Sole proprietors and general partnerships are not registered with the state, and so it is necessary for them to file “fictitious business statements” with the County to inform the public of the owners or “principals” of the company. If corporations and limited liability corporations are only using their actual registered name, then they do not need to file fictitious business statements but those using a different name in the course of their business also must file.

So, for example, if your name is Bill Gates and you open a sole proprietorship known as “Bill's Software” in San Francisco, you need to file a fictitious business statement in City Hall, San Francisco, which lets the government and the public know that Bill's Software belongs to you. Likewise, if one is a corporation named, say, “Microsoft”, but it wants to do business using the name “Bill's Software”, then it must file a fictitious business statement telling the world that this corporation is using that trade name.

This name is then referred to by the phrase “doing business as”; for example, Bill Gates doing business as Bill's Software, or in the case of a corporation, “Microsoft dba Bill's Software”.

There are very specific rules for when you need to file a fictitious business statement and when you do not. If you use your entire first and last name, “Bill Gates' Software”, then you do not need to file. If you use only your first name or initials, like “B.G. Software”, then you have to file. If you have a partnership using the last names of the partners, let's say “Gates and Jobs Computer Equipment”, there's no need to file. However, if it's any other partnership

name, even one using the first names – such as “Bill and Steve’s Computers” -- then it will be required to file.

Of course, every business owner believes their business name is original and unique. However, if it is not, when one attempts to file the fictitious business statement, the county will not allow use of the name. Before a business owner can register a fictitious business name, a search of the county database of registered names will be done to make sure the name is not already taken. If your name is Bill Gates and you get the idea to do business in California as “Apple Computers”, you can be pretty sure that you won’t be allowed to do so.

After filing it with the County, you need to publish your fictitious business statement in a “newspaper of general circulation”. The County office gives you an approved list. There are certain legal or specialty newspapers who do this more cheaply than the big newspapers. The purpose of this is to give formal notice to the world, or at least the subscribers of that newspaper, that you have started your business using the name chosen.

These county fictitious business records are important for many purposes. They give consumers a way of making complaints about business owners that may not be otherwise identified. Certainly if a lawsuit against a business needs to be filed, especially if that business is not a corporation and does not use the owner’s name, one needs to know who the owner is and where to serve him the legal papers. Lastly it serves to ensure that two or more businesses are not using the same name in the same county for their business.

It is necessary for small business owners to go through this formality. For one, business owners break the law by not registering their trade names, and theoretically risk being closed down by the County (at least temporarily). But there is also the risk that after one has invested time, money and hard work in building up the reputation of a name, if it is not registered, the name may be taken and used by someone else who may benefit from all of your hard work and effort.

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**CHRISTOPHER A. KEROSKY** is a partner with Wilson Purves in the law firm of KEROSKY PURVES & BOGUE, with offices located in San Francisco, Santa Rosa, Ukiah, Napa, Walnut Creek, San Jose and Sacramento. Mr. Kerosky has been an attorney licensed to practice law in California for 25 years. He is a graduate of UC Berkeley (Boalt Hall) School of Law and a former trial lawyer for the Civil Division of the U.S. Department of Justice in Washington D.C. For 9 years, he has been honored as one of Northern California’s top lawyers by San Francisco Magazine, “Super Lawyers” edition. Mr. Kerosky speaks English, Spanish and Polish and has also working knowledge of Russian.

**WARNING: The article above is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.**