

THE COUNTY OF LLANO
LLANO, TEXAS
LLANO COUNTY CLERK, MARCI HADELER
P.O. BOX 40
LLANO, TEXAS 78643
325-247-4455

ASSUMED NAME FILING



**HOW TO REGISTER
YOUR BUSINESS
IN TEXAS**

NOTE: To get your Tax ID# you must contact the State
Comptroller's Office at: 1-800-252-5555

ASSUMED NAME CERTIFICATE INFORMATION

To start a business in the State of Texas, one needs to get an ASSUMED NAME CERTIFICATE, commonly known as "doing business as or dba". Most banks require an Assumed Name Certificate to open a business bank account. It is necessary to obtain an Assumed Name Certificate in every county where business will be conducted.

Filing an Assumed Name Certificate does not prevent another party from using the same name. Direct any legal questions regarding a business name to an attorney.

The filing fee for an Assumed Name Certificate in Llano County is \$26.00.

At the time of filing a copy of the filed Certificate will be given for your records.

An Assumed Name Certificate is good for ten (10) years from the date of filing.

The clerk has no duty to notify a party of the expiration of a certificate therefore, it is the owner's responsibility to make sure a new certificate is filed timely.

If the business closes it is necessary to file an ABANDONMENT OF ASSUMED NAME CERTIFICATE. The filing fee is \$26.00.

FEES FOR ASSUMED NAME CERTIFICATES

Assumed Name Certificate- \$26 flat rate

GENERAL PUBLIC INFORMATION ON ASSUMED NAME CERTIFICATES

Your objective should be to choose name for your business that is unique, one that will not 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. File the name **exactly** as you wish to use it, considering spaces, commas, periods, etc. **Check that particular name** in the Assumed Name Records of the county in which you plan to operate. Certificates of Assumed Name should be filed with each county in which you will be operating.

If planning to incorporate, then the name you incorporate under is filed with the Secretary of State and reserved throughout the state. **Articles of Incorporation be filed with the Secretary State to secure incorporated is protected - assumed name not.** Let's 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.

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.

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 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 settled in court. **Point to remember:** whoever filed the name first has a definite advantage.

A filing is valid for a maximum of ten (10) years. This is the length of time that is normal when filing as assumed name. However, if you are sure that you will use the name for a period less than 10 years, indicate so on the form.

You must also provide information on your business type. Is your company a Corporation, Partnership, Sole Proprietorship, etc.? Don't ask the staff at the County Clerk's Office' which one you are; they don't know. Additionally, they can not provide advice on legal issues such as this. This needs to be settled between you, your accountant and your lawyer. Have this information available when you fill out the form.

The form will also require the names of the owners, their personal addresses and signatures. Note: The signatures have ~ be notarized. This can often be done at the courthouse if all of the owners are present. Otherwise, just take the form with you. It shouldn't be filed until everyone has signed it and it has been notarized. **Many of the County Clerk's Offices will file the documents even if they are not properly filled out** (as an example, only one of three partners signed it). Remember, it is their job to file legal documents, not to ensure that they are legally correct.

Fill out the form and give it to one of the staff members work for the County Clerk for filing. The cost of this paperwork process is a \$26.00 flat rate.

FREQUENTLY ASKED QUESTIONS

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

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

- **What If I plan to do business in multiple counties?**

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 will need to file your assumed name certificate(s) in the county in which the corporation's registered office is different from your principle office, then you need to file the assumed name certificate(s) in both counties.

- **Do I have to file an Assumed Name Certificate if or am only going to use the name I incorporated under?**

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 requirement.

- **What rights does an assumed name certificate give me?**

Neither the filing nor 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 can be made.

- **Then why do it?**

Because the Texas Business and Commercial 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 be tied to 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 who's trying to capitalize on your hard work.

- **Can you use your own name?**

Sure you can. Many people do.

- **What If your company name is already reserved?**

Consider another name.

- **How different does the name have to be?**

First, consider the reason for choosing your company name in the first place. You want people to know who you are and what you do so they will buy goods or services from you. If you choose a name that is similar to someone else's, your customer might get confused. Also, someone else could get the benefit of your hard work and advertising dollar. Second, if you choose a name that is similar to someone else's, you may wind up in a legal battle over it. This normally proves costly and time consuming. And once the dispute is over, you may have to change your name anyway.

- **How can I find out If a corporation is already using the name I have chosen?**

You can call the secretary of State at 512-463-5555.

- **Where can I obtain additional information and help?**

Contact the Texas Department of Commerce, Small Business Division at 1-800-888-0511. This office offers free services that assist both new and expanding business.

BUSINESS REGISTRATION REQUIREMENTS

The legal structures for business available In Texas are as follows:

SOLE PROPRIETORSHIP • A sole proprietorship exists when a single individual operates a business owning all assets. A sole proprietorship is personally liable for all debts and business ownership is non-transferable. Under a sole proprietorship, the life of the proprietorship is limited to the life of the individual proprietor. The sole proprietorship makes no legal distinction between personal and business debts, and it does not require a separate income tax return.

GENERAL PARTNERSHIP • A general partnership exists when two or more individuals or businesses join to operate a business; Under the general partnership, a separate business entity exists, but creditors can still look to the partners' personal assets for satisfaction. General partners share equally in assets and liabilities. The general partnership requires an annual partnership income tax return (separate from the partners' personal returns).

CORPORATION • A corporation is created when two or more individuals or other individuals, partnerships, or owners join together to form a separate entity for the purpose of operating a business in the state. A corporation has its own legal identity, separate from its owners. The corporation safeguards the business owners' personal assets. Taxation of the corporation varies depending on the type of corporation formed - C Corporation or S Corporation. A C Corporation is taxed at a higher rate than an individual. The owners are not taxed personally for profits; however, the owners do pay personal taxes on any salaries and/or dividends, and the corporation is also taxed on the dividends. Owners of an S Corporation may personally deduct losses the same as a partnership. The S Corporation offers alternative methods for distributing the business income to the owners, and there is no added cost to the incorporation process.

LIMITED LIABILITY COMPANY • A limited liability company is an unincorporated business entity which shares some of the aspects of S corporations and limited partnerships, and yet has more flexibility than more traditional business entities. The limited liability company is designed to provide its owners with limited liability and pass-through tax advantages without the restrictions Imposed on S corporations and limited partnerships.

LIMITED PARTNERSHIP • A limited partnership is a partnership formed by two or more persons or entities, under the laws of Texas, and having one or more general partners and one or more limited partners. General partners share equally in debts and assets while limited partners have limited debt obligations.

REGISTERED LIMITED LIABILITY PARTNERSHIP • A general partnership registered with the Secretary of State is a "registered limited liability partnership." A partner's liability in a registered limited liability partnership differs from that in an ordinary partnership. In a registered limited liability partnership, a partner is not individually liable, under some circumstances, for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of the partnership business by others in the partnership.

A professional tax consultant accountant, and or attorney should be consulted before determining which legal structure best suits the requirements of the business and its owner(s). Once the legal structure of the business has been determined, the next step is to complete the necessary registration requirements.

**Please bring or mail your completed form to the
LLANO COUNTY CLERK
107 West Sandstone, Downtown Llano.
Mailing:
P.O. BOX 40
LLANO, TEXAS 78643**

**If you have any additional questions please call us at
325-247-4455**

**Forms are available for download at
<http://www.co.llano.tx.us/page/llano.County.Clerk>**