

TEXAS BUSINESS & COMMERCE CODE

CHAPTER 36. ASSUMED BUSINESS OR PROFESSIONAL NAME

SUBCHAPTER A. GENERAL PROVISIONS

§ 36.02. **DEFINITIONS.** In this chapter, unless the context otherwise requires:

(1) “**Partnership**” means a joint venture or general partnership other than a limited partnership or a registered limited liability partnership.

(2) “**Company**” means a real estate investment trust, joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated other than a partnership, limited partnership, limited liability company, or registered limited liability partnership.

(3) “**Corporation**” means a domestic or foreign corporation, professional corporation, professional association, other corporation, or any other business, professional, or other association or legal entity that is incorporated.

(4) “**Person**” includes an individual, partnership, limited partnership, limited liability company, registered limited liability partnership, company, or corporation.

(5) “**Representative**” means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or any other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

(6) “**Estate**” means the property of any person which is administered by a representative.

(7) “**Assumed, name**” means:

(A) in the case of an individual, a name that does not include the surname of the individual;

(B) in the case of a partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) in the case of an individual or a partnership, a name, including a surname, that suggests the existence of additional owners by including words such as “Company,” “& Company,” “& Son,” “& Sons” “& Associates,” “Brothers,” and the like, but not words that merely describe the business or professional service being conducted or rendered;

(D) in the case of a limited partnership, any name other than the name stated in its certificate of limited partnership;

(E) in the case of a company, any name used by the company;

(F) in the case of a corporation, any name other than the name stated in its articles of incorporation or association or comparable document;

(G) in the case of a registered limited liability partnership, any name other than the name stated in its application filed with the office of the Secretary of State or comparable document; and

(H) in the case of a limited liability company, any name other than the name stated in its articles of organization or comparable document.

(8) “**Registrant**” means any person that has filed, or on whose behalf there has been filed, an assumed name certificate under the provisions of this chapter or other law.

(9) “**Office**” means, in the case of any person that is not an individual or that is a corporation which is not required to or does not maintain a registered office in this state, the principal office of such person and also its principal place of business if not the same as its principal office. In the case of a corporation, limited partnership, registered limited liability

partnership, or limited liability company which is required to maintain a registered office in this state, "office" means the registered office and also its principal office if not the same as its registered office.

(10) "Address" means a post office address and also the street address if not the same as the post office address.

Added by Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1993, 73rd Leg., ch. 215, § 1.29, eff. Sept. 1, 1993.

§ 36.03. EXCLUSION OF INSURANCE COMPANIES. The provisions of this chapter shall not apply to any insurance company as described in Subchapter A, Chapter 805, Insurance Code, which is authorized to do business in this state except as such code shall specifically provide.

Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, § 10A.506, eff. Sept. 1, 2003.

SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

§ 36.10. FOR UNINCORPORATED BUSINESS OR PROFESSION OTHER THAN A LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY.

(a) Any person who regularly conducts business or renders professional services other than as a corporation, limited partnership, registered limited liability partnership, or limited liability company in this state under an assumed name shall file in the office of the county clerk in each county in which such person has or will maintain business or professional premises or, if no business or professional premises are or will be maintained in any county, in each county where such person conducts business or renders a professional service, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) if the registrant is:

(A) an individual, his full name and residence address;

(B) a partnership, (i) the venture or partnership name, (ii) the venture or partnership office address, and (iii) the full name of each joint venturer or general partner and his residence address if he is an individual or its office address if not an individual;

(C) an estate, (i) the name of the estate, (ii) the estate's office address, if any, and (iii) the full name of each representative of the estate and his residence address if he is an individual or its office address if not an individual;

(D) a real estate investment trust, (i) the name of the trust, (ii) the address of the trust, (iii) the full name of each trustee manager and his residence address if he is an individual and its office address if not an individual; or

(E) a company other than a real estate investment trust, or a corporation, (i) the name of the company or corporation, (ii) the state, country, or other jurisdiction under the laws of which it was organized, incorporated, or associated, and (iii) its office address;

(3) the period, not to exceed 10 years, during which the assumed name will be used; and

(4) a statement specifying that the business or professional service that is or is to be conducted or rendered in the county under such assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, partnership, real estate investment trust, joint-stock company, or some other form of unincorporated business or professional association or

entity, other than a limited partnership, limited liability company, or registered limited liability partnership, as the case may be.

(b) A certificate filed under Subsection (a) of this section shall be executed and acknowledged by each individual whose name is required to be stated therein or by his representative or attorney in fact, and in the case of any person not an individual the name of which is required to be stated therein, the certificate shall be executed and acknowledged under oath on behalf of such person by its representative or attorney in fact or by a joint venturer, general partner, trustee manager, officer, or anyone having comparable authority, as the case may be, of such person. Any certificate executed and acknowledged by an attorney in fact shall include a statement that such attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1993, 73rd Leg., ch. 215, § 1.30, eff. Sept. 1, 1993.

§ 36.11. FOR INCORPORATED BUSINESS OR PROFESSION, LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY. (a) Any corporation, limited partnership, registered limited liability partnership, or limited liability company which regularly conducts business or renders professional services in this state under an assumed name, or which may be required by law to use an assumed name in this state to conduct such business or render such services, shall file in the office of the Secretary of State and, (1) if such corporation, limited partnership, registered limited liability partnership, or limited liability company is required to maintain a registered office in this state, in the office of the county clerk of the county in which such registered office is located and of the county in which its principal office is located if within this state and not the same county where the registered office is located; or (2) if such corporation, limited partnership, registered limited liability partnership, or limited liability company is not required to or does not maintain a registered office in this state, in the office of the county clerk of the county in which its office within this state is located or if the corporation, limited partnership, registered limited liability partnership, or limited liability company is not incorporated, organized, or associated under the laws of this state, in the office of the county clerk of the county in which its principal place of business in this state is located if not the same as its office, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) the name of the corporation, limited partnership, registered limited liability partnership, or limited liability company as stated in its articles of incorporation, association, or organization or in its certificate of limited partnership or application filed with the office of the Secretary of State, or other comparable document;

(3) the state, country, or other jurisdiction under the laws of which it was incorporated, organized, or associated and address of its registered or similar office in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the assumed name will be used;

(5) a statement specifying that the entity is a business corporation, nonprofit corporation, professional corporation, professional association, or other type of corporation, limited partnership, registered limited liability partnership, limited liability company, or some other type of incorporated business, professional or other association, or legal entity;

(6) if the corporation, limited partnership, registered limited liability partnership, or limited liability company is required to maintain a registered office in this state, (A) the

address of such registered office and the name of its registered agent at such address, and (B) the address of its principal office if not the same as that of its registered office in this state;

(7) if the corporation, limited partnership, registered limited liability partnership, or limited liability company is not required to or does not maintain a registered office in this state, its office address in this state and if the corporation, limited partnership, registered limited liability partnership, or limited liability company is not incorporated, organized, or associated under the laws of this state, the address of its place of business in this state and its office address elsewhere, if any; and

(8) the county or counties within the state where business or professional services are being or are to be conducted or rendered under such assumed name.

(b) A certificate filed in the office of the Secretary of State under Subsection (a) of this section shall be executed by an officer, general partner, member, manager, representative, or attorney in fact for the corporation, limited partnership, registered limited liability partnership, or limited liability company. A certificate executed by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute the same. A certificate filed in the office of the county clerk under Subsection (a) of this section shall be executed and acknowledged in the manner provided by Section 36.10(b) of this code for a certificate filed under that section.

(c) Nothing in this chapter shall require a corporation, limited partnership, registered limited liability partnership, or limited liability company or its shareholders, associates, partners, or members to file an assumed business or professional name certificate in order to conduct business or render a professional service within this state under the name of the corporation, limited partnership, registered limited liability partnership, or limited liability company as stated in its articles of incorporation, association, or organization, certificate of limited partnership, application filed with the office of the Secretary of State, or other comparable document.

(d) Notwithstanding Subsections (a)-(c) of this section, a limited partnership, registered limited liability partnership, or limited liability company that filed a certificate in compliance with Section 36.10 of this chapter before September 1, 1993, is not required to file a new certificate that complies with this section until the earlier of:

(1) the expiration of the period specified in the existing certificate during which the assumed name will be used; or

(2) a material change occurs in the information set forth in the existing certificate.

Added by Acts 1977, 65th Leg., p. 1097, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1993, 73rd Leg., ch. 215, § 1.31, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 327, § 1, eff. Sept. 1, 1999.

§ 36.12. MATERIAL CHANGE IN INFORMATION; NEW CERTIFICATE. (a) Whenever an event occurs that causes the information in a certificate filed pursuant to this chapter by a person conducting business or rendering a professional service under an assumed name in this state to become materially misleading, a new certificate complying with Section 36.10 or Section 36.11 of this chapter, as the case may be, shall be filed in the office of the county clerk and of the Secretary of State, if applicable, in which an original or renewal certificate was filed. The new certificate shall be filed within 60 days after the occurrence of the events which necessitates its filing.

(b) An event that causes the information contained in a certificate filed under this chapter to become materially misleading includes such matters as:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) in the case of a proprietorship or sole practitioner, a change in ownership;
(3) in the case of a partnership, the admission of a new partner or joint venturer or whenever any general partner or joint venturer ceases to be associated with the partnership; or
(4) in the case of a registrant that is required by law to maintain a registered or similar office and a registered or similar agent at such office, a change in the address of such office or identity of such agent.

(c) A new certificate filed under this section shall be effective for a term not to exceed 10 years from the date it is filed.

Added by Acts 1977, 65th Leg., p. 1098, ch. 403, § 1, eff. Aug. 29, 1977.

§ 36.13. DURATION AND RENEWAL OF CERTIFICATE. (a) A certificate filed pursuant to this chapter in the office of the county clerk and of the Secretary of State, if applicable, by any person conducting business or rendering a professional service under an assumed name in this state shall be effective for a term not to exceed 10 years from the date the certificate is filed.

(b) At the end of the stated term, not to exceed 10 years, the certificate shall become null and void and of no effect, unless within six months prior to its expiration a renewal certificate complying with the provisions of this chapter for an original certificate shall be filed in the office of the county clerk and of the Secretary of State, if applicable.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each such term shall not exceed 10 years in duration.

Added by Acts 1977, 65th Leg., p. 1099, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1999, 76th Leg., ch. 327, § 2, eff. Sept. 1, 1999.

§ 36.14. ABANDONMENT OF USE OF ASSUMED BUSINESS OR PROFESSIONAL NAME. (a) A registrant that has filed an assumed business or professional name certificate under this chapter which ceases to transact business or render professional services under the assumed name stated in such certificate in this state may file in the office of the county clerk and of the Secretary of State, if applicable, where such certificate has been filed, a statement of abandonment of use of a business or professional name setting forth:

(1) the assumed business or professional name being abandoned;
(2) the date on which the certificate was filed in the office in which such statement is being filed and any other filing office or offices, if any, where the certificate has been filed; and

(3) the registrant's name and residence (or office address as would be required to be stated if the certificate were being presently filed.

(b) A statement filed under Subsection (a) of this section shall be executed and acknowledged in the same manner as would be required if the registrant were filing an assumed business or professional name certificate under this chapter.

Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.

§ 36.15. INDEX OF CERTIFICATES; FILING FEES. Each county clerk and the Secretary of State shall keep an alphabetical index of all assumed names which have been filed in his office pursuant to the provisions of this chapter and of the persons filing the same. The county clerk shall receive a fee of \$2 for filing each certificate or statement required or permitted to be filed pursuant to this chapter, plus a fee of 50 cents for each name to be indexed. The Secretary of

State shall collect for the use of the state a fee of \$25 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. The Secretary of State shall collect for the use of the state a fee of \$10 for filing each abandonment of use of assumed name. A copy of such certificate or statement duly certified to by the county clerk in whose office the same was filed or by the Secretary of State shall be presumptive evidence in all courts in this state of the facts therein contained.

Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 752, ch. 284, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 314, ch. 69, § 9, eff. Sept. 1, 1983.

§ 36.16. PRESCRIBED FORMS. The Secretary of State may prescribe the forms to be used for filing any assumed business or professional name certificate or statement that complies with this chapter in his office or in the office of any county clerk in this state. The use of such forms, however, shall not be mandatory unless otherwise specifically provided by law.

Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.

§ 36.17. EFFECT OF FILING. Nothing in this chapter shall be construed to give a registrant of an assumed business or professional name any right to use the name when contrary to the common law or statutory law of unfair competition, unfair trade practices, and common law copyright, or similar law. The mere filing of an assumed business or professional name certificate pursuant to this chapter shall not constitute actual use of the assumed name set out therein for purposes of determining priority of rights.

Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.

§ 36.18. FILING OF REPRODUCTION. The Secretary of State may accept for filing a photographic, photostatic, or similarly reproduced copy of a signed original document required or authorized to be filed in the office of the Secretary of State under this chapter. A signature on a document required or authorized to be filed in the office of the Secretary of State under this chapter may be a facsimile.

Added by Acts 1999, 76th Leg., ch. 327, § 3, eff. Sept. 1, 1999.

SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

§ 36.25. CIVIL PENALTIES. Failure to comply with the provisions of this chapter by any person shall not impair the validity of any contract or act by such person nor prevent such person from defending any action or proceeding in any court of this state, but such person shall not maintain an action or proceeding in any court of this state arising out of a contract or act in which an assumed name was used until an original, new, or renewed assumed business or professional name certificate has been filed as required by this chapter. In an action or proceeding brought against a person that has not complied with this chapter, the plaintiff or other party bringing the suit or proceeding may recover, if the court shall so determine, expenses incurred, including attorney's fees, in locating and effecting service of process on such person.

Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.

§ 36.26. CRIMINAL PENALTY — GENERAL VIOLATION. (a) A person conducting business or rendering a professional service in this state under an assumed name who intentionally violates a provision of this chapter commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1977, 65th Leg., p. 1101, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 867, ch. 391, § 1, eff. Aug. 27, 1979; Acts 1999, 76th Leg., ch. 327, § 4, eff. Sept. 1, 1999.

§ 36.27. CRIMINAL PENALTY — FRAUDULENT FILING. (a) A person may not knowingly or intentionally sign and present for filing or cause to be presented for filing a document authorized or required to be filed under this chapter if the document:

(1) indicates that the person signing the document has the authority to act on behalf of the entity for which the document is presented and the person does not have that authority;

(2) contains a material false statement; or

(3) is forged.

(b) A person who violates Subsection (a) of this section commits an offense. An offense under this subsection is punishable as if it were an offense under Section 37.10, Penal Code.

Added by Acts 1999, 76th Leg., ch. 327, § 5, eff. Sept. 1, 1999.