

Does Your Farm or Agri-Business Need To File a Certificate of Assumed Name?

By Cari B Rincker, Esq.

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Many farms and agribusinesses operate as a DBA (“doing business as”) or an “assumed name.” Many businesses in the state of New York, including those involved in the food and agriculture industry, are not properly registered. Pursuant to Section 130 of the NY General Business Law, no person or entity can “(i) carry on or conduct or transact business in this state *under any name* or designation other than his or *its real name*, or (ii) carry on or conduct or transact business in this state as a member of a partnership” unless a certificate is properly filed.

If the person or entity is not a corporation, limited partnership or a limited liability company, then this person or entity is required to file a certificate and \$25.00 filing fee with the *county clerk* of *each county* in which such business is conducted or transacted. In this instance, the Certificate of Assumed Name must set forth the: (i) name or designation which business is being conducted, (ii) address within the county in which business is being transacted, and (iii) full name(s) of the people conducting or transacting business. If the entity is a general partnership, the Certificate must also contain the names and residences of all partners. The age of any person less than eighteen (18) years of age must be included. This certificate must be signed and duly acknowledged by all persons conducting the business.

To illustrate, Curt and Pam Rincker d/b/a Rincker Simmentals, Cari Rincker d/b/a Blackacre Ranch Photography, or Farmer Jane and Farmer John d/b/a Catskills Agri-tourism Partnership should all file certificates with the county clerk. If the name of my law practice was the Law Offices of Cari B. Rincker, a certificate of assumed name would not need to be filed because I am a lawyer and my name is Cari B. Rincker.

If the entity is a corporation, limited partnership or limited liability company, then the entity is required to file the Certificate of Assumed Name with the *NYS Secretary of State* that must set forth: (i) its real name, (ii) its assumed name, (iii) business structure, (iv) its principal place of business within the state of New York, (v) names of every county in which it does business or *intends* to carry out a business, and (vi) the street addresses for each place where it carries on or transacts businesses in the state. This certificate of assumed name shall be signed by the corporation’s officer, limited partnership’s general partner, or a limited liability company’s member/manager. See GBL § 130(1)(b). An example of this scenario would be if Farmer Joe, Inc. was doing business under the name Redacre Farm. The “real name” would be Farmer Joe, Inc. and because it is doing business under a different name then a certificate should be filed. There is a \$100 filing fee for each county in which the corporation, limited partnership or limited liability company transacts or intends to transact business.

Please note that corporations, limited partnership sand limited liability companies, require filing documents with the NYS Secretary of State upon formation. If a partnership has not filed limited partnership papers, then it is a general partnership and should file a certificate with the county clerk instead of the NYS Secretary of State.

The certificate of assumed name does not need to be renewed; however, pursuant to Section 130(3), farms and agri-businesses are required to file an amendment within thirty days of any changes. A certificate of discontinuance should also be filed once the business is no longer active. A certified copy of the original certificate, or if it has been amended then the amended certificate, must be conspicuously displayed on the premises at each place where business is conducted.

Importantly, it is a *misdemeanor* to “knowingly make a false statement” in a certificate of assumed name or make a fraudulent omission (e.g., failure to disclose name/address of partner). Furthermore, any person or entity who fails to comply with this law will be prohibited from maintaining any action or proceeding in any court in the State of New York on any contract, account or transaction made in a name other than its real name until the entity has complied with this statute. In other words, if Farmer Jane and Farmer John above sign a contract under the name Catskills Agri-tourism Partnership but they fail to properly file a certificate of assumed name then it cannot enforce a breach of contract until Farmers Jane and John have properly filed the certificate.

It is easy to overlook details like this when getting a business off the ground. It is even easier to push aside details once a farm or agri-business has been operating for several years without properly filing a certificate of assumed name. “It hasn’t caused any issues so far, so why do it?” It might not have been an issue yet but it may create issues in the future. Take a few minutes and look at whether your farm or agribusiness is in compliance with this statute. If you have questions, seek counsel from an attorney licensed in New York to guide you through the process.

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