

FICTITIOUS NAMES IN FLORIDA

If you own a small business, it's likely that you are operating your business under a catchy name which describes the type of business you're in or the type of service you provide, such as "Larry's Low-Cost Landscaping" or "Al's Affordable Auto Parts." Even if you structure your business as a corporation or partnership, chances are good that you still advertise or promote your business under a different name. Any time you operate a business under a name which is different than your individual or company name, you are doing business under a fictitious name.

In order to ensure that consumers of business products and services know with whom they are dealing, Florida law requires that businesses operating under a fictitious name must register that name with the Florida Department of State. The only exceptions are businesses operated in the practice of their profession by attorneys licensed by the Florida Bar and by professionals licensed by the Florida Department of Business and Professional Regulation. Registration requires the filing of an Application for Registration of Fictitious Name with the Florida Department of State, using the Department's registration form, accompanied by a \$50.00 filing fee. The form and payment can be completed via the internet at <https://efile.sunbiz.org/ficregintro.html>. The Division of Corporations further provides public access assistance at (850) 245-6939. Registration is good for 5 years, except that if you sell your business the new owner needs to re-register under his own name within 30 days after buying your business.

What happens if you don't comply? Technically it's a second degree misdemeanor, which means you can be fined up to \$500.00 and thrown in jail for up to 60 days (although it's a safe bet the state attorney's office has better things to do than prosecute you for this type of offense). The more pragmatic penalty is that your business won't be allowed to maintain any court actions until you register. This means that if you get into any disputes with customers or suppliers, you won't be able to take your dispute to court without registering first, although you will be able to defend yourself in court if you are sued. Even if you don't register, contracts and agreements which you enter into in connection with your business will still be valid and binding (although you can't enforce them in court without registering).

Keep in mind that registration of your fictitious name is for purposes of public notice only, and will not reserve your name against future uses or protect it from competitors who may wish to use the same name. If you want to protect your name from competitors, you will need to independently register the name under state or federal law, or both. The Florida Department of State has a separate office which handles registration of trade names, trademarks and service marks at the state level, while the U.S. Patent and Trademark Office handles registration of trademarks used in interstate commerce. Both procedures are fairly complex, and should be handled only with the advice of an attorney who is experienced in trademark registration.