



CORPORATE DEPARTMENT

# ALERT

## PENNSYLVANIA'S DECENNIAL FILINGS DUE THIS YEAR: RISK OF LOSING NAMES, INSIGNIAS AND MARKS

By Glen W. Fewkes

Corporations and other entities doing business in Pennsylvania may risk losing their exclusive rights to names, insignias and marks by not filing the required Decennial Reports in 2011. The Pennsylvania Department of State required certain corporations and other business entities to file a Decennial Report every tenth year (i.e., during every year ending in a one), starting in 2001, indicating their continued existence or continued use of a business name or certain marks. The legislative intent behind this requirement is to identify names and marks no longer in use so they may be reissued to other users.

### Who Is Affected?

Decennial Reports are required of all domestic and foreign profit and nonprofit corporations, limited liability companies, limited partnerships, limited liability partnerships, business trusts, insignias and “marks used with articles and supplies” that have not made a new or amended filing with the Pennsylvania Department of State from January 1, 2002, through December 31, 2011. Excluded from the filing requirement are: (i) entities that made a new or amended filing with the Corporation Bureau from January 1, 2002, through December 31, 2011, **other than** a decennial filing, a name reservation, name search, consent to appropriation of name or fictitious name registration; (ii) any nonqualified foreign business corporation that has registered its name pursuant to 15 Pa.C.S. §4131 (requiring annual renewal of the

name); and (iii) a corporation that has had officer information forwarded to the Department of State by the Department of Revenue during the preceding 10 years under 15 Pa.C.S. §1110 (relating to annual report information).

Entities are not required to file Decennial Reports for fictitious names and trademarks.

In December 2010, the Department of State began mailing notices, filing forms and instructions to all entities required to file Decennial Reports with current addresses on file. In addition, a searchable database of all businesses required to file is now available on the Department of State’s Corporation Bureau web site. Despite the department’s attempts to notify all required entities, failure of the department to give notice, or the failure of an entity to receive notice, **does not relieve an entity of the obligation to file.**

### Filing Forms and Deadlines

Filings are made on one of two forms: the “Decennial Report of Association Continued Existence” or the “Decennial Report – Insignia/Mark Used with Articles or Supplies.” The filing fee for each form is \$70. Decennial Reports must be received by the Department of State prior to January 1, 2012.

### Loss of Protection

Failure to file results in a variety of consequences. If a nonexempt corporation or other business entity fails to

file during 2011, it no longer has exclusive use of its name on or after January 1, 2012. While the business entity continues to exist, its name becomes available to any corporation or other association registering to do business in Pennsylvania that may request it. Late filings will reinstate the name of the entity on the register only if the name has not been appropriated by another entity during the delinquency period. If an entity with a registered insignia or “mark used with articles and supplies” does not file during 2011, its insignias and marks will no longer be registered and may be restored only by filing an original application for registration.

### **What To Do**

Be sure to watch your mail for notices from the Pennsylvania Department of State and check the searchable database on the Department of State’s Corporation Bureau web site.

For more information about this Alert, or if you want to ensure your entity’s names, insignias and marks are protected in Pennsylvania, please contact Glen W. Fewkes at 215.299.3831 or [gfewkes@foxrothschild.com](mailto:gfewkes@foxrothschild.com) or any member of Fox Rothschild’s Corporate Department.



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