

Kimball, Tiley & St. John LLP

Fictitious Business Name Statements

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Updated August, 2017

California property owners often use fictitious business name statements in connection with their properties. For example, an apartment complex may be owned by a company, "Apartment Investment, LLC" but the property owner may do business under the name "Sunny Days Apartments". Property managers also often use fictitious business names in connection with their businesses. Property owners and managers doing business under fictitious business names must file and publish fictitious business name statements.

What is a Fictitious Business Name?

- For individuals - a name that does not include the owner's last name or suggests the existence of additional owners, such as "Sons", "Associates", "Brothers" or "Company".
- For general partnerships - a name that does not include the last name of each general partner or a name that suggests the existence of additional owners. For limited partnerships – a name other than the limited partnership name on file with the California Secretary of State.
- For corporations - a name other than the corporate name stated in its articles of incorporation.
- For limited liability companies - a name other than the name of the LLC as on file with the Secretary of State.

Note that if a corporation, limited partnership or limited liability company uses a variation of its formal legal name, that is a fictitious business name. For example, if the name "ABC Company" is used by ABC Company, Inc., or ABC Company, LP or ABC Company, LLC, the name "ABC Company" is a fictitious business name.

Why is a Fictitious Business Name filing and publication required? If a fictitious business name statement hasn't been filed and published within forty (40) days of commencing business, no legal action can be maintained in the fictitious business name until the fictitious name statement requirements have been met. If noncompliance with fictitious business name requirements is discovered during litigation, it may cause a delay in the litigation and removing a nonpaying tenant.

How do I file? There are fees for filing and for publication. Filing is completed with the Recorder's office in the County of the filer's principal place of business in California. County Recorders have forms and instructions available online. However, often the simplest method is to find a newspaper that handles both fictitious business name filings and publication in the county where the filing will be made. There are many newspapers that provide this service in each county, and their prices may vary widely, so check pricing. In San Diego County, filers can contact the Uptown San Diego Examiner at (619) 955-8960 or <http://uptownexaminer.com/> or another legal publisher. The Uptown San Diego Examiner charges \$70 (as of this writing) to handle both the filing and the publication.

Publication. In addition to filing with the County Recorder, the fictitious business name statement must be published in a newspaper of general circulation within the County, once a week for four consecutive weeks, with the first publication occurring within 30 days of the filing date. An affidavit certifying the publication must be filed with the County Clerk within 30 days of the last publication.

Expiration. Fictitious business name statements expire 5 years after filing or 40 days after any change in facts of the statement (except any change to a residential address for any registrant).

County recorders do not send out notices that fictitious business name statements are about to expire, so filers should calendar this deadline in their own records. If a renewal is filed within 40 days from the expiration date and the information has not changed, publication is not required for the renewal.

Abandonment. If a fictitious business name will no longer be used (for example, a property or business is sold), a statement of abandonment of fictitious business name should be filed and published.

Exceptions to Fictitious Business Name Filing Requirements. A fictitious business name statement is not required if the business is a real estate investment trust, or a non-profit corporation or association (such as a church, labor union, or charitable organization).

Real Estate Agents and Brokers Doing Business Under Fictitious Business Names. California real estate agents and brokers using fictitious business names must also register their fictitious business name with the California Bureau of Real Estate, and renew it with the County when required. See www.dre.ca.gov/files/pdf/forms/re282.pdf and www.dre.ca.gov/files/pdf/reb/rebfall_11.pdf for more information. For information about CalBRE's position about fictitious business names that include names of salespersons and "team names" see www.dre.ca.gov/files/pdf/AdvisoryPolicyChangeTeamNames.pdf.

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