



EARLY CARE & EDUCATION LAW UNIT

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NAMING YOUR FAMILY CHILD CARE BUSINESS

California State law requires individuals, partnerships and corporations to register a “Fictitious Business Name” (commonly known as a DBA – “doing business as”) if they operate a business and/or collect money under a name different from their legal surname(s) or corporation names.¹ This handout provides answers to questions that you may have regarding naming your family childcare business.

GENERAL INFORMATION

1. What is a sole proprietorship?

A sole proprietorship is a business that is owned by only one person and is not being operated as a corporation, limited liability company, or other formal legal entity. As a sole proprietor, the name you choose for your business should not include the words “Corporation,” “Corp.,” “Inc.,” “Limited Liability Company,” “LLC,” or other similar names that suggest the business is a corporation or limited liability company.²

2. Who should register a Fictitious Business Name?

Anyone that operates a business (such as a family childcare business) under a name that is different from their legal surname(s) or corporation names must register a Fictitious Business Name. The registration of a Fictitious Business Name allows an individual or a partnership to open a bank account, collect checks and receive payments under the chosen Fictitious Business Name. It also allows the business to legally publish, advertise and create a website using the new name.

If you are a sole proprietor and you plan to do business in California under a trade name that includes your surname (for example, your name is “John Doe” and you will do business as “Doe Family Child Care”), then you do not need to file a Fictitious Business Name registration. **However**, if you plan to do business under a trade name that does not include your surname (for example, “Little Butterflies Child Care” instead of “Doe Family Child Care”), or if the name you choose

¹ California Business and Professions Code § 17910.

² California Business and Professions Code § 17910.5.

suggests the existence of additional owners (for example, it includes words such as “& Company,” “& Son(s),” “& Associate(s),” “Brothers,” etc.), then you must register that name by filing a Fictitious Business Name Statement with the clerk of the county in which you have your principal place of business.³

Please note that use of a fictitious business name does not change the name of your child care business on your state child care license. The name on your child care license is generally your last name and the phrase “Family Child Care”. Therefore, to be clear and prevent confusion, you should use both the name on your child care license and your fictitious business name on contracts and other official documents for your business (i.e., Johnson Family Child Care DBA Little Butterflies Child Care). Community Care Licensing does not require you to report that you have a fictitious business name, but sending your Licensing regional office or your licensing program analyst your fictitious business name in writing may help future clients to find you.

3. Why must I register a Fictitious Business Name?

Registration of a Fictitious Business Name is required in order to make the identities of the persons doing business under the fictitious name available to the public. It also preserves your exclusive right to use the name in the county where your business is located.

4. When should I register and how do I renew my registration?

A Fictitious Business Name must be registered **within 40 days** from the time you start your business operations. California State law requires that you file a Fictitious Business Name statement with the clerk of the county where your family childcare business is located. Please see below for LA County information.

A Fictitious Business Name registration lasts for **FIVE** years. It expires five years from the date it was filed with the County Clerk. A new Fictitious Business Name Statement must be filed before that expiration date. If the new statement is not filed, the registration of the name will automatically expire and another business owner could potentially register that name as his or her own. It is important that you keep track of the registration filing and expiration dates.

5. Can a nonprofit organization use a fictitious business name?

Nonprofits use alternate names for many reasons, from making a name shorter to representing a particular project. A nonprofit considering a name change can either legally change its name by amending its articles of incorporation (or comparable founding document), or it can use a Fictitious Business Name.

³ California Business and Professions Code §§ 17900(b)(1), (c) and 17915.

While nonprofits are exempt from Fictitious Business Name registration requirements in California⁴, registration for a Fictitious Business Name is straightforward and inexpensive so it is recommended that nonprofits register.

The following tips may be useful for both for profit businesses and nonprofits using fictitious business names:

- Use the business's/nonprofit's legal name plus the Fictitious Business Name in all contracts (for example, "Doe Family Child Care, dba Little Butterflies Child Care") to avoid unenforceability of contracts entered into by the business/nonprofit and/or penalties for enforcing contracts prior to registering for a Fictitious Business Name;
- When writing checks, you may use either name, depending on what the recipient will accept (the name on the check should probably match the name on the underlying contract, but this is not required). When accepting and depositing checks, you may use either name, provided the bank will deposit the checks. Banks set their own rules, so it is worth inquiring;
- The IRS requires businesses/nonprofits to list both a legal name and any Fictitious Business Names on tax filings. Business/organization policies should likewise use the legal name (plus the Fictitious Business Name, if desired), since these are part of the business/organization record. Furthermore, many of these policies must now be attached to Form 990;
- There is no legal impediment to using Fictitious Business Names on promotional materials. However, be careful if your Fictitious Business Name bears no resemblance to your legal name, since this can cause confusion. (For example, consider a business legally named "Doe Family Child Care" that uses "Little Butterflies Child Care" in its promotional material. If a benefactor leaves a bequest to "Little Butterflies Child Care," the executor and probate court may be confused about which business/organization is entitled to the funds.) It is recommended that you first research whether other businesses/nonprofits are already using confusingly similar names;
- Businesses/nonprofits using a Fictitious Business Name for a particular project may have letterhead, etc., in the name of the project. To avoid confusion about whether the project is a separate entity or part of the existing business/organization, it is recommended that you clarify this (for example, if the letterhead provides "Global Scholarships, a project of World Charity," readers understand that Global Scholarships is part of World Charity, not a separate entity.)

REGISTRATION STEPS FOR LOS ANGELES COUNTY

There are private companies that provide services to help with filing Fictitious Business Name Statements. The cost of these services generally ranges from between \$120 and \$300 and include newspaper publication. However, it is relatively simple to file a Fictitious Business Name Statement without the assistance of private companies.

⁴ California Business and Professions Code § 17911.

There are three steps to registering a fictitious business name. First, you need to confirm that the name is not being used by another business. Second, you must file a fictitious name statement and pay the filing fee. Third, you need to publish the name in a newspaper with general circulation. See below for more information on each of these steps. For any questions not answered on this information sheet, go to: <http://www.lavote.net/home/county-clerk/fictitious-business-names/general-info>, or contact the LA County Clerk's office nearest you.

1. STEP ONE - CHECK NAME AVAILABILITY

A Fictitious Business Name can be used by only one business within one county. Before registering your business name you need to check that no one else in the county where you want to do business is using the name you want. You can check the availability of a name either online or in person. The County Clerk's office does not accept search requests by telephone.

Although the California Secretary of State does not require that you register your fictitious business name with the state, you are only protected from trademark infringement by a corporation or LLC with the same name as your business if you filed for a fictitious business name with the county before a corporation or LLC registers the same name with the state.⁵ Federal trademark protection functions similarly.⁶

Search the County

Online:

The easiest way to check whether your desired business name is already in use is by searching online at the LA County Clerk's website: <https://apps.lavote.net/OBFR/BFRMain.aspx>. First click on one of the following links depending on how you intend to file for your fictitious business name: In-Person, Mail-In, or Third Party. Then click on the link that says "Fictitious Business Name Statement – Original". On that webpage, type your choice of name into the search box. If another business owner has already registered the name, the relevant information will appear in the search result. If the search returns no result, your chosen name is still available. There is no fee for using the online search.

⁵ Cal. Bus. & Prof. Code § 14416. If your fictitious business name is the same as an LLC or corporation name in the county, whoever registered the name first is more likely to have the exclusive right to use the name in that county. The California Secretary of State office has a free service for checking name availability by mailing in a name availability form. Information can be found on the Secretary of State website:

<http://www.sos.ca.gov/business/be/name-availability.htm>.

⁶ United States Patent and Trademark Office has an online search you can use to check if any other company has already put your desired name into use as a trademark. Go to <http://www.uspto.gov/trademarks/index.jsp>. Click on the icon labeled TESS – Trademark Search. Do a search for the words in your name.

In-Person:

You may prefer to conduct the search in person by going to the Norwalk Registrar-Recorder/County Clerk's office or its branch offices in Van Nuys and at LAX (see below for office address information, please note, no in person search is offered at the Lancaster office). However, nominal copy or print charges may apply.⁷

2. STEP TWO - FILE FICTITIOUS BUSINESS NAME STATEMENT

If the search shows that your chosen name is available, you must complete and file a *Fictitious Business Name Statement* no later than 40 days after you start doing business in California under that name.⁸ You can file the statement by mail or in person. You can usually find a downloadable version of your county's Fictitious Business Name Statement on your county clerk's website or request a form by calling your county clerk. For Los Angeles County, please visit <https://apps.lavote.net/OBFR/BFRMain.aspx> and follow the instructions to complete the filing process.

Filing a Fictitious Business Name Statement via Mail:

Mail the completed statement, a notarized Affidavit of Identity, a check or money order for the appropriate filing fees, and a self-addressed, stamped envelope to the following address:

Business Filing and Registration
P.O. Box 53592
Los Angeles, California 90053-0592

For more information, call the County Clerk's office at (562) 462-2177. Make checks payable to LA County Clerk.

Remember to include a self-addressed envelope so that you will receive a stamped receipt of the filing.

Filing a Fictitious Business Name Statement In-Person:

You may choose to file in person at the Registrar-Recorder's main office in Norwalk, or at the branch offices in Van Nuys, Lancaster, and at LAX. You can start the process by filling out the form online. By filling out each successive page, you can complete the necessary parts of the form. When you submit the form, you will receive a confirmation number. Bring the confirmation number in with you to the County Clerk's office to pay the fee. Note that only the registrant may complete the process in this way. A third party will need to have authorization and a notarized Affidavit of Identity. You

⁷ There is \$5 non-refundable fee per name for in-person searches and a \$2 fee per document for a Certified Copy of Fictitious Business Name Search if a name is found.

⁸ California Business and Professions Code § 17910(a). However, the Los Angeles County Clerk's office has stated that businesses may register for a fictitious business name even after 40 days of its first use. Please check with your local county clerk as this rule may differ depending on the county in which your business is located.

can find the online form at: <https://apps.lavote.net/obfr/BFRMain.aspx>. Click on the link that says "Third Party" and follow the instructions to complete the process.

The office locations and hours are listed below. All office hours are Monday through Friday, except on holidays.

Norwalk	Van Nuys	LAX	Lancaster
12400 Imperial Hwy. 1st Floor, Room 1201 Norwalk, CA 90650	14340 W. Sylvan Street Van Nuys, CA 91401	11701 S. La Cienega Bl., 6th Floor Los Angeles, CA 90045	44509 16th St. West, Suite 101 Lancaster, CA 93534
(562) 462-2177	(818) 376-3777	(310) 727-6142	(661) 945-6446
Office Hours: 8 AM to 5 PM	Search Hours: 8:30 AM to 4:30 PM	Search Hours: 8:30 AM to 4:30 PM	NO SEARCH AVAILABLE
	Filing Hours: 8:30 AM to 3:30 PM	Filing Hours: 8:30 AM to 3:30 PM	Filing Hours: 8:30 AM to 3:30 PM

Filing Fees as of June 2015: Filing fees may change. Check with the County Clerk for any changes before filing.

FILING FEES	
Description	Amount
Original Filing	\$26.00 per business name with one registrant
Renewal Filing	\$26.00 per business name with one registrant
Additional Business Names and/or Registrants	\$5.00 per additional name or registrant

Further information is available at: <http://www.lavote.net/home/county-clerk/fictitious-business-names/general-info>.

3. STEP THREE - PUBLICATION

California State law requires that you publish the Fictitious Business Name Statement in a newspaper of general circulation in the county in which your family childcare business is located.

This must be done within 30 days of the date of filing and once a week for four successive weeks.⁹ If you are filing a renewal statement because your registration is about to expire, you do not need to publish the Fictitious Business Name Statement again.

To publish the Statement, contact the “Legal Publication” department of the local newspaper. Costs vary between newspapers, so be sure to ask about details regarding the publication process and pricing. Also ask the newspaper to provide you with proof of publication, which you must submit to the county clerk.

To find a list of newspapers of general circulation in Los Angeles County, go to the following website: http://rrcc.lacounty.gov/Clerk/Newspaper_Circulation.cfm.

ADDITIONAL RESOURCES

1. For further information about naming your family child care business, please refer to the Los Angeles County Registrar-Recorder/County Clerk website at: <http://www.lavote.net/home/county-clerk/fictitious-business-names/general-info>

This document was prepared by Public Counsel’s Early Care & Education Law Unit in June 2015 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Project Intake line at (213) 385-2977, ext. 300.

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⁹ California Business and Professions Code § 17917.