

§1308. Limited partnership name; assumed name

- 1. Requirements for real name.** This subsection governs the real name of a limited partnership.
- A. A limited partnership name:
- (1) May contain the name of any partner;
 - (2) Must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP," unless the limited partnership is filing an assumed name under subsection 2 or a registration of name under section 1309, subsection 2. If the phrase "Limited Partnership" is used, a limited partnership may also use the abbreviation "L.P." or "LP" without filing an assumed name under subsection 2; and
 - (3) May not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." unless it has been designed as a limited liability limited partnership. If so designated, the name must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "L.P." or "LP." [PL 2005, c. 543, Pt. C, §2 (NEW).]
- B. Except as authorized by paragraphs C and D, a limited partnership name must be distinguishable on the records of the Secretary of State from:
- (1) The name of a corporation, nonprofit corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State;
 - (2) Assumed, fictitious, reserved and registered name filings for all entities; and
 - (3) Marks registered under Title 10, chapter 301-A, unless the registered owner or holder of the mark is the same person or entity as the limited partnership seeking to use a name that is not distinguishable on the records of the Secretary of State and files proof of ownership with the Secretary of State. [PL 2005, c. 543, Pt. C, §2 (NEW).]
- C. The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:
- (1) Consists of or comprises language that is obscene;
 - (2) Inappropriately promotes abusive or unlawful activity;
 - (3) Falsely suggests an association with public institutions; or
 - (4) Violates any other provision of the law of this State with respect to names. [PL 2005, c. 543, Pt. C, §2 (NEW).]
- D. A limited partnership may apply to the Secretary of State for authorization to use a name that is not distinguishable on the records of the Secretary of State from one or more of the names described in paragraph B. The Secretary of State shall authorize use of the name applied for if:
- (1) The entity in possession of the name applied for consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or
 - (2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State. [PL 2005, c. 543, Pt. C, §2 (NEW).]
- E. A limited partnership may use the name, including the assumed or fictitious name, of another domestic or foreign limited partnership that is used in this State if the other limited partnership is organized or authorized to transact business in this State and the limited partnership proposing to use the name:

- (1) Has merged with the other limited partnership;
- (2) Has been converted into another limited partnership; or
- (3) Has transferred substantially all of its assets including the conflicting name to the limited partnership. [PL 2005, c. 543, Pt. C, §2 (NEW).]

F. In determining whether names are distinguishable on the records, the Secretary of State shall disregard the following:

- (1) Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";
- (2) The presence or absence of the words or symbols of the words "and" and "the"; and
- (3) Differences in the use of punctuation, capitalization or special characters. [PL 2005, c. 543, Pt. C, §2 (NEW).]

G. If a foreign limited partnership authorized to transact business in this State changes its name to one that does not satisfy the requirements of this section, it may not transact business in this State under the proposed new name until it adopts a name satisfying the requirements of this section and files an amended application for authority under section 1412, subsection 2 that is accompanied by a statement of use of a fictitious name under section 1415. [PL 2005, c. 543, Pt. C, §2 (NEW).]

H. Notwithstanding subsection 2, the name of a limited partnership may not be distinguishable on the records of the Secretary of State if the limited partnership was organized under the laws of this State prior to January 1, 1992 or the foreign limited partnership was authorized to do business in this State prior to January 1, 1992 and had the right to use the name as its legal name prior to January 1, 1992. [PL 2005, c. 543, Pt. C, §2 (NEW).]

I. Subsection 2 does not apply to the name of any limited partnership, the certificate of which is suspended, on and after the 3rd anniversary of the suspension. [PL 2005, c. 543, Pt. C, §2 (NEW).]

[PL 2005, c. 543, Pt. C, §2 (NEW).]

2. Requirements for use of assumed name. This subsection governs the use of an assumed name by a limited partnership.

A. As used in this subsection, "assumed name" means a trade name or any name other than the real name of a limited partnership except a fictitious name. [PL 2005, c. 543, Pt. C, §2 (NEW).]

B. Upon complying with this subsection, a domestic limited partnership or foreign limited partnership authorized to transact business in this State may transact its business in this State under one or more assumed names. [PL 2005, c. 543, Pt. C, §2 (NEW).]

C. Prior to transacting business in this State under an assumed name, a limited partnership shall execute and deliver to the Secretary of State for filing a statement setting forth:

- (1) The limited partnership name;
- (2) That the limited partnership intends to transact business under an assumed name;
- (3) The assumed name that the limited partnership proposes to use;
- (4) If the assumed name is not to be used at all of the limited partnership's places of business in this State, the locations where it will be used; and
- (5) If a foreign limited partnership:

- (a) The jurisdiction of organization and its date of organization; and
- (b) The date on which it was authorized to transact business in this State. [PL 2005, c. 543, Pt. C, §2 (NEW).]

D. A separate statement must be executed and delivered for filing with respect to each assumed name that the limited partnership proposes to use. [PL 2005, c. 543, Pt. C, §2 (NEW).]

E. Each assumed name must comply with the requirements of subsection 1. [PL 2005, c. 543, Pt. C, §2 (NEW).]

F. If a limited partnership uses an assumed name without complying with the requirements of this subsection, the continued use of the assumed name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the assumed name. [PL 2005, c. 543, Pt. C, §2 (NEW).]

G. Notwithstanding its compliance with the requirements of this section, the use of an assumed name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

- (1) The assumed name did not, at the time the statement required by this subsection was filed, comply with the requirements of subsection 1; or
- (2) The assumed name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law. [PL 2005, c. 543, Pt. C, §2 (NEW).]

H. The mere filing of a statement under this subsection does not constitute actual use of the assumed name set out in that statement for purposes of determining priority of rights. [PL 2005, c. 543, Pt. C, §2 (NEW).]

I. A limited partnership may terminate an assumed name by executing and delivering a statement setting forth:

- (1) The name of the limited partnership;
- (2) That the limited partnership no longer intends to transact business under the assumed name; and
- (3) The assumed name the limited partnership intends to terminate. [PL 2005, c. 543, Pt. C, §2 (NEW).]

[PL 2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §C2 (NEW).

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