

44

8/20/69

Memorandum 69-87

Subject: Study 44 - Fictitious Business Names

Attached to this memorandum is a copy of the tentative recommendation (revised April 4, 1969) relating to fictitious business names that was distributed for comment and copies of the comments received. This memorandum will review the few new points raised and summarize the remainder. The staff hopes, however, that the Commissioners will read all of the attached letters in their entirety. At the September meeting, we further hope that the recommendation, with any desired changes, can be approved for printing.

As noted above, there is actually very little new ground to be covered. The newspapers continue to resist any change in the present system that may affect them. See Exhibits V, VII, and X. Specifically, they oppose (1) the reduction in the number of publications from four to one (Section 17915); (2) the elimination of the publication of the acknowledgment (you will recall this is accomplished in the present recommendation by elimination completely of a requirement that the statement be acknowledged. See Section 17912); (3) the elimination from the publication of the residence address(es) of the registrant; and (4) the authorization of the county clerk to furnish summaries of filings (Section 17922). However, the staff does not believe any new arguments or facts are presented in support of this position. Accordingly, this memorandum will not prolong the debate but merely notes the issues presented.

You will also note the expression of support for central filing from two private attorneys (see Exhibits I and XII), a representative consumer credit reporting bureaus (Exhibit II), and the Department of

Corporations (Exhibit IX). Central filing was advocated in the research study and incorporated in earlier versions of the recommendation. However, the idea was abandoned and the decision to retain the present basic system of filing was made in July 1968. That decision was based primarily on the recognized convenience to many of local filing which would have to be retained even if a central filing system were established, and the desire to avoid the additional expense of dual filing. The Commission may wish to reconsider its decision, but the staff does not believe that anything new has been offered that was not previously considered--other than the unwillingness of the newspaper industry to accept the Commission's "compromise" proposal.

Turning from these somewhat general issues, the staff does wish to direct the Commission's attention to some more specific points raised. With respect to the persons required to comply with the statute, the following comments of Mr. Harold Marsh (Exhibit I) should be noted:

The treatment of Massachusetts trusts in the proposed statute is completely inadequate. This is highly important since all REIT's [Real Estate Investment Trusts] must be organized as Massachusetts trusts because of the provisions of the Internal Revenue Code. [IRC § 856] Otherwise, this would not cause any concern since no one would use a Massachusetts trust unless he were forced to.

The statute clearly includes Massachusetts trusts within the filing requirement but all of its subsequent provisions, for example, Section 17911(e) refer only to individuals or to "general partners". In a Massachusetts trust there are trustees and shareholders, but neither individuals nor general partners. This failure to adequately deal with a Massachusetts trust runs throughout the remainder of the proposed statute.

It is obviously completely impossible for the names of all the shareholders of a Massachusetts trust to be filed, although they are more analogous to "general partners" than are the trustees. Nor do I see any reason why this statement should have to be filed every time there is a change in one or more of the trustees of a Massachusetts trust. These persons are analogous to the directors of a corporation and the Proxy Statements for their elections must be filed with the S.E.C. Therefore it is already public record of who is elected at each annual meeting and I cannot see any necessity for having to amend this statement every time such a change occurs in a REIT. . . . I would suggest

that . . . [an] exemption for Massachusetts trusts be phrased either to exempt those Massachusetts trusts which have an outstanding security registered under Section 12(g) of the Securities Exchange Act of 1934 (and, therefore, are filing annual and periodic reports with the Securities Exchange Commission and are subject to the Securities Exchange Commission's proxy regulations), or to exempt those Massachusetts trusts which have not less than 100 shareholders (and, therefore, are presumably qualified REITs under the provisions of the Internal Revenue Code of 1954). I do not think that it really makes any difference which of these approaches is taken, since I am quite sure there is no REIT in existence that has not been created by the making of a public offering which resulted in its acquisition by more than 500 shareholders, which brings it under the registration requirements of the Securities Exchange Act.

It should be noted that the inclusion of business or "Massachusetts" trusts under the coverage of the statute does not change prior law. However, the provision of a more meaningful sanction in our recommendation gives greater importance to the inclusion. The business trust is an antiquated form of business organization; there are, however, probably some such organizations still extant in California in addition to the ones Mr. Marsh refers to. For the most part, they are treated for taxation purposes, at least, as corporations. The real estate investment trust is simply a specific statutory exception to the general rule. While, for our purposes, generally speaking, the "shareholder" or beneficiary occupies the status most like a general partner and would, therefore, probably be the one required to be listed on the fictitious business statement, Corporations Code Section 23001 specifically provides that shareholders or beneficiaries of a qualified real estate investment trust shall not be subject to personal liability, and they may not, therefore, be considered "general partners" under Section 17901 of the recommendation. Whether this distinction would be sufficient to differentiate real estate investment trusts and thus satisfy Mr. Marsh's criticism is uncertain. See Exhibit XI (attached) for the provisions relating to real estate investment trusts. An appropriate exemption could be included

using the language of Corporations Code Section 23000. On the other hand, a different approach is suggested by the Commission's previous recommendation relating to the liability of unincorporated associations (see Corporations Code Sections 24000-24007--attached as Exhibit XII). There the Commission provided for the filing of a statement with the Secretary of State which contains among other things the name of the unincorporated association and the address of its principal office in the state, if it has such an office. Such filing also permits any person to secure the information necessary to at least serve process on the association. We could perhaps amend Section 17900 to define "fictitious business name" in the case of an unincorporated association as any name other than the association name filed with the Secretary of State in accordance with Section 24003 of the Corporations Code. This would make treatment of unincorporated associations analogous to that of corporations, still provide an adequate source of information to potential litigants, and perhaps solve Mr. March's problem. This alternative would secure the benefits of central filing suggested by Mr. March in Exhibit I.

Further comments with respect to the coverage of the statute were received from the Department of Corporations.

The proposed changes to the now existent statute would provide (with some exceptions) a requirement of filing a fictitious-name statement by every person who regularly transacts business in this state for profit under a fictitious name.

There are two definitional problems that may be posed with this provision. The first concerns the limits of "regularly": A quantitative or time value is not implied with the use of the term. This would have, of course, a disadvantage to some out-of-state businesses who may unknowingly cross a line from "occasionally" to "regularly" doing business in this state. [To the same effect, see comment (3) on page 1 of Exhibit XIII, a letter from Mr. Martin Gendel, a member of the Committee on the Commercial Code.]

Secondly, is the question of what is meant by "in this state." Questions will arise as to whether, for example, a mail-order house operating out of California would be subject to the provisions, or if solicitations made in California culminating in sales outside of the borders of California would be considered as being in this state.

The staff believes that these points were considered earlier by the Commission and that the consensus of feeling then was that recognizing the possible ambiguities, these issues were better left to judicial control.

In addition to coverage, both Mr. Marsh and the Department of Corporations commented on the problem of sanctions. Mr. Marsh noted:

The provisions of Section 17924(a) imposing a penalty of \$300 for each violation should in my opinion specify for what period of time this sum is due while the organization is in non-compliance. Otherwise, it would be possible for a court to say that this was \$300 per day since the person might be knowingly and willfully violating the statute each separate day. On the other hand, I do not think this can be simply \$300 for a perpetual violation, since otherwise the collection of the penalty would in effect be a license not to comply thereafter. I would suggest that it be \$300 per year.

The Department noted:

The civil penalty of \$300 for non-compliance, enforced by civil action prosecuted by the county counsel or district attorney seems to have serious problems. The penalty may be too great where a person inadvertently fails to file within 40 days of operating a business, or where there is some question whether an out-of-state partnership is regularly doing business in this state, is "regularly doing business" or doing business "in this state" at all. On the other hand, a disreputable company may find that \$300 is a bargain price for remaining anonymous. The prosecution of such cases would lead to some anomalies since the small, more rural, counties where identity may be hard to conceal, would find that because of a lack of pressing matters in other areas would have a very zealous county counsel or district attorney prosecuting \$300 claims with regularity. In the more metropolitan counties, where there would seem to be more demand for identities being made known by the filing of statements, prosecutions would not be forthcoming with the same zeal since the press of criminal and civil litigation would not afford the time to the prosecutors.

Other enforcement alternatives should be considered. For example, prior to opening a bank account or obtaining telephone service in a fictitious business name, evidence may be required that compliance has been made with the statute.

With respect to the enforcement alternatives suggested by the Department, the staff does not believe the recommendation should or could place a law-imposed burden of enforcement upon private bodies, such as the telephone company or banking institutions. You will recall, however, that we have been advised that the latter do, in fact, frequently require compliance with the statute and will presumably continue to do so.

The problem of uneven enforcement efforts is not peculiar to this statute. It seems that the most we can provide are sound principles. It should be noted, in this regard, that Section 17924(a) provides a maximum penalty of \$300, pleas of "good faith" or inadvertent noncompliance should be directed to the court. The temporal problem of Mr. Marsh is self-explanatory. The staff believes that the statute should at least be clear in this respect. The suggestion of Mr. Marsh could be implemented by revising Section 17924 as follows:

17924. (a) Any person who knowingly and willfully fails to comply during any calendar year or portion of a calendar year with the requirements of this chapter is liable civilly in a sum to be determined by the court not to exceed three hundred dollars (\$300) per year.

The Commission may, however, have intended that \$300 was the maximum penalty for a perpetual violation. This, of course, would be an open invitation to some firms to violate the statute simply in the interest of economy. If this was the intention, the staff believes that at least an appropriate explanation in the Comment to this effect is needed.

Finally, one commentator would retain the present plea in abatement and "would seriously consider giving the aggrieved party in a civil action the right to recover certain monetary sanctions (e.g., the \$300.00). . . ." (see page 3, Exhibit XIII). The Commission has already rejected both suggestions; the latter partly on the ground that it would stimulate litigation. The staff believes that the prior decisions were sound.

You will note from Exhibit VIII that the recommendation should state "more than one-fourth"--rather than "most"--of the certificates are published in legal newspapers. We will make this change in the recommendation.

Respectfully submitted,

Jack I. Horton
Associate Counsel

EXHIBIT I

HINDIN, McKITTRICK & MARSH

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TELEPHONE: (202) DISTRICT 7-0529

(WASHINGTON OFFICE PRACTICE
LIMITED TO FEDERAL AGENCIES)

CABLE ADDRESS:
HINMACMAR, BEVERLY HILLS

May 27, 1969

Maurice D. L. Fuller, Sr., Esq.
Pillsbury, Madison & Sutro
Standard Oil Building
225 Bush Street
San Francisco, California 94104

Dear Del:

I have received the draft tentative recommendation of the California Law Revision Commission relating to fictitious business names (as revised April 4, 1969), transmitted by Mr. Zellmann of the State Bar in his letter of May 14, 1969.

I have the following comments on this recommendation:

1. The treatment of Massachusetts trusts in the proposed statute is completely inadequate. This is highly important since all REIT's must be organized as Massachusetts trusts because of the provisions of the Internal Revenue Code. Otherwise, this would not cause any concern since no one would use a Massachusetts trust unless he were forced to.

The statute clearly includes Massachusetts trusts within the filing requirement but all of its subsequent provisions, for example, Section 17911(e) refer only to individuals or to "general partners". In a Massachusetts trust there are trustees and shareholders, but neither individuals nor general partners. This failure to adequately deal with a Massachusetts trust runs throughout the remainder of the proposed statute.

It is obviously completely impossible for the names of all the shareholders of a Massachusetts trust to be filed, although they are more analogous to "general partners" than are the trustees. Nor do I see any reason why this statement should have to be filed every time there is a change in one or more of the trustees of a Massachusetts trust. These persons are analogous to the directors of a corporation and the Proxy Statements for their elections must be filed with the S.E.C. Therefore it is already public record of who is

HINDIN, MCKITTRICK & MARSH

Maurice D. L. Fuller, Sr., Esq.
May 27, 1969
Page 2

elected at each annual meeting and I cannot see any necessity for having to amend this statement every time such a change occurs in a REIT.

2. The provisions of Section 17924(a) imposing a penalty of \$300 for each violation should in my opinion specify for what period of time this sum is due while the organization is in non-compliance. Otherwise, it would be possible for a court to say that this was \$300 per day since the person might be knowingly and willfully violating the statute each separate day. On the other hand, I do not think this can be simply \$300 for a perpetual violation, since otherwise the collection of the penalty would in effect be a license not to comply thereafter. I would suggest that it be \$300 per year.

3. As one fundamental suggestion, which I think we should pursue very strenuously, I recommend that this filing be a central filing in the Secretary of State's office so that it can be put on the same computer and coordinated with the filings of financing statements under the U.C.C. If we were correct in our insistence on central filing under Article 9 of the U.C.C., and I think that events have demonstrated beyond a shadow of a doubt that we were, all of the reasons for and advantages of such central filing are equally applicable of these fictitious names. Furthermore, this would permit the tying in of the fictitious name filing with the U.C.C. and at some time in the future we could, for example, provide that a filing of a financing statement in any fictitious name which was also filed would be a proper filing under the U.C.C. A search would then turn up both records. Furthermore, if a person simply knows the name but not where the principal office of an organization is located, it is impossible for him to find the file under the proposal of the Law Revision Commission unless he searches in every county until he turns it up. We have led the nation in moving into the electronic age under the U.C.C. and I think we should vigorously support the continued preeminence of California in that respect.

Sincerely yours,


Harold Marsh, Jr.

HM:jr

cc: Members of the Committee on the
Uniform Commercial Code

Mr. John H. Demouilly,
California Law Revision Commission

HINDIN, MCKITTRICK & MARSH

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CABLE ADDRESS:
HINMACMAR, BEVERLY HILLS

July 12, 1969

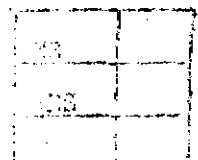
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Fictitious Business Name Statute

Dear John:

In reply to your letter of May 28, 1969, I would suggest that the exemption for Massachusetts trusts be phrased either to exempt those Massachusetts trusts which have an outstanding security registered under Section 12(g) of the Securities Exchange Act of 1934 (and, therefore, are filing annual and periodic reports with the Securities Exchange Commission and are subject to the Securities Exchange Commission's proxy regulations), or to exempt those Massachusetts trusts which have not less than 100 shareholders (and, therefore, are presumably qualified REITs under the provisions of the Internal Revenue Code of 1954). I do not think that it really makes any difference which of these approaches is taken, since I am quite sure there is no REIT in existence that has not been created by the making of a public offering which resulted in its acquisition by more than 500 shareholders, which brings it under the registration requirements of the Securities Exchange Act.

So far as the justification for the exemption is concerned, it seems to me that the Commission's draft statute wholly fails to deal with Massachusetts trusts in any meaningful fashion and is enough indication that the Commission did not give adequate consideration to this problem. The fact is that a REIT is merely a business organization which



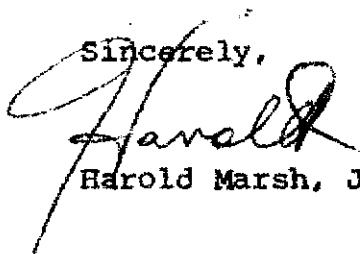
HINDIN, McKITTRICK & MARSH

Mr. John H. DeMouilly
July 12, 1969

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would always be a corporation except for the fact that the provisions of the Internal Revenue Code forced it to adopt this antique, 19th Century form of organization. Otherwise, it is organized and operated as much like a corporation as possible. Unless the Commission is going to require the filing of one of these documents every time a corporation changes a member of its Board of Directors, then there is no conceivable reason to require such a filing when a REIT changes a member of its Board of Trustees. As far as requiring such a filing whenever one of the shareholders transfers his interest, I do not think it would take any argument to demonstrate that this is impossible.

Sincerely,



Harold Marsh, Jr.

HM/bm

cc: Maurice D. L. Fuller, Esq.

CHARLES J. BENSON

15 STOCKTON STREET
SAN FRANCISCO 94108

July 2, 1969

California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, Calif. 94305

Gentlemen:

Re: California Fictitious Business Name
Statute - Proposed Revisions.

The proposed recommendations apparently will not hamper the operation of consumer credit reporting bureaus, with whom I am affiliated, nor does there seem to be any presentations with which it would be difficult for reporting agencies to comply.

One comment made by an associate was that "sanctions for failure to comply with the statute do not include the usual requirement of compliance with the statute as a condition to maintaining a suit upon a claim." It was pointed out that the statutes in Idaho, Oregon and Washington all have this feature.

It was also commented upon that the County Clerk is required to file any fictitious name submitted upon payment of the required fee without regard to whether or not the name would be in use by any other and whether or not the name may be that of a corporation.

Comment was also made that the recited situation is the same in the States of Idaho and Washington but that Oregon is different. Oregon is unique in that all assumed business names are required to be filed with the corporation commissioner, and one cannot use in Oregon an assumed business name which is the same as, or very similar to, the name of a corporation or an assumed business name used by another.

After approving the filing of an assumed business name (in Oregon) by the corporation commissioner, the name is then filed in those counties in which the party having the assumed business name transacts business. This procedure

California Law Revision Commission
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avoids conflict and confusion in the use of corporation
and assumed business names in Oregon.

A further reference was made to Section 6875 govern-
ing collection agencies in California, which requires that
"a license not be issued in a name which is the same or
so similar to that of an existing licensee that would tend
to deceive the public."

Yours very truly,



Charles J. Benson

CJB/mw

*My personal view — the Oregon
requirement of centralization appears
desirable.*

Memo 69-87
EXHIBIT III
COLLECTION & CONTACT AGENCY

LICENSED - COLLECTION AGENCY - BONDED
CONTACT CALLS - COLLECTIONS - CREDIT REPORTING

577 - 14th STREET

OAKLAND 12, CALIFORNIA

Glencourt 2-0148

April 14, 1969

*California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

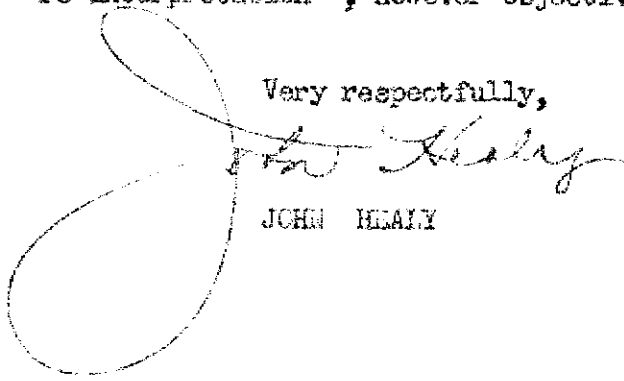
Gentlemen:

I have studied your " Tentative Recommendation relating to Fictitious Business Names " and it is my lay opinion that it would serve as a satisfactory substitute for the present time-tested statutes were there any valid reasons for abandoning them.

You are to be congratulated for aborting the a priori " Secretary of State " scheme you initially propounded.

As an archivist, the writer admonishes you of the legal fraternity to bear in mind that at least some of the essence of law is the intent of the framers and " revision " and " re-interpretation ", however objective, may wholly distort that essence.

Very respectfully,


JOHN HEALY

jh/l

Memo 69-87

EXHIBIT IV

JACOBS & MUSHRUSH

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ALFRED A. JACOBSON
FRANK L. MUSHRUSH
ATTORNEYS

April 21, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Tentative Recommendation #44,
Revised April 4, 1969, relating to
Fictitious Business Names

Gentlemen:

The undersigned has received and studied your revised recommendation #44 relating to a change in the fictitious business names statute.

I should like to say that I am wholly in accord with the revision and, if I had any criticism of it at all, it would be that it is not going to go into effect soon enough.

The present system has resulted in the ridiculous situation whereby, in order to avoid a demurrer, it must be alleged in a complaint that the fictitious names statute presently in existence has been complied with, whether it has or not.

As a matter of practice, it has been observed that the effect of this is that attorneys insert an allegation of compliance whether there has been compliance or not, thus putting the defendant in an action to the burden of determining if indeed there has been compliance in order to effectively raise the issue. If the issue is effectively raised and there has not been compliance, the only necessity is that the attorney for the plaintiff then comply. This serves no valid purpose, except to obfuscate the judicial process by a totally unrelated and peripheral matter.

Nevertheless, a proper recordation of the use of fictitious names is, in the writer's opinion, most beneficial, as many people go into business in this State deliberately hiding their identity for fraudulent purposes, or at best, for the purpose

California Law Revision Commission
April 21, 1969
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of avoiding their creditors while they conduct their business, and the statute would seem to be remedial of this problem.

If there is sufficient time to bring this matter before the Legislature, I would suggest that the operative date be made July 1, 1970, rather than July 1, 1971. I cannot see where there would be any substantial opposition to this legislation. While it is true the newspaper publishers of this type of notification would lose three publications on each item, they would also gain a much greater total of items and that would seem to make up any deficiency in that respect.

I sincerely hope this matter will be vigorously pressed before the Legislature.

Very truly yours,

JACOBS & MUSHRUSH

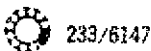

Raymond L. Mushrush (LH)

RLM:bw



The Daily Transcript

734 FIRST AVENUE • POST OFFICE BOX 1670 • SAN DIEGO, CALIFORNIA 92112



28 July, 1969

California Law Revision Commission
School of Law
Stanford, California 94305

Dear Sirs,

A reading of the proposed Fictitious Business Name Statute and the comments attached thereto raises many practical questions, particularly in regard to the supposed readiness of the general public to check with county officials and the propriety of government agencies issuing lists in competition with private business. Naturally, newspaper publishers may be felt to be interested parties and therefore biased. However, I am venturing to offer some thoughts on the proposed statute, for the long and close experience with legal notice common to publishers of court and commercial newspapers does have some practical value.

1. Publication of fictitious names is for the purpose of giving immediate notice of facts which might otherwise never come to light. If a person has no reason to suspect that a business association which may deceive him, or which for many other reasons he should know about, is to be made he will certainly not investigate such associations. It is not enough for him to know where to check up on known businesses with whom he deals; he must know it at the time when business associations are formed which may affect his interests. Recently major stockholders in a local bank formed a partnership the essence of which was agreement to sell their bank shares only in a pre-arranged manner. Without publication of their fictitious name, other shareholders would have no reason to suspect this action, which vitally affected their interests. It is advisable to retain requirements for publication of names of limited partners.
2. By substituting issuance of a list made by the county clerk on a subscription basis, the commission is in effect demanding that newspapers continue to publish fictitious names, but rather than receiving payment, they must pay for the information. For in order to retain subscribers, newspapers such as ours will be obliged to publish the clerk's list.
3. No more than one address is needed, as suggested by the commission. But in many cases, the proposed business has no address other than a postoffice box. In such a case, the residence address of at least one partner should be required.
4. If the requirement for a sworn statement is dropped, it should be replaced with a form for certifying under penalty of perjury, as in the new certificates



The Daily Transcript

734 FIRST AVENUE • POST OFFICE BOX 1670 • SAN DIEGO, CALIFORNIA 92112

233/6147

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of publication which have replaced the old affidavits.

5. If the registrant has no place of business in this state, his notice should be filed and published in each county. Publication in Sacramento County only is tantamount to no publication.

6. The current requirement for four publications should be retained. It ensures that the notice will not be passed over by accident, and that notice of formation of a business association will reach all parties in time for them to take any action they consider necessary.

I very much appreciate the courtesy of the Commission in making it possible for me to register these comments on some of the practical sides of the new proposal. Only those features of the proposal which in my opinion were not advisable have been covered; many other features of it represent improvements and it is certainly always desirable to revise statutes and bring them into line with modern conditions. The Commission is performing a most necessary function in this regard, and I am sure all interested persons appreciate this.

One more small comment, probably irrelevant. The title Fictitious Name is very misleading to the general public, most of whom feel that aspersions are somehow being cast on the legitimacy of their business name, taking it to mean something similar to 'alias'. Would it be at all possible to re-name the notice, perhaps by simply eliminating the word 'fictitious'?

Sincerely yours,

(Mrs. Quinn Hornaday)

AGH:hs



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Assistant Secretary
B. C. SCHMIDT

July 31, 1939

Mr. John H. DeMouilly
California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford Ca 94305

Dear Mr. DeMouilly:

In view of the fact that many of our members carry their accounts under trade names we are opposed to any changes in the fictitious firm name statutes that would in any way cut down the amount of vital information presently available from the filed document in the County Clerks offices or the copies as published in the various newspapers.

Sincerely,

W. J. Kumpf
Chairman Legislative Committee
Board of Trade of San Francisco
Credit Managers Association of N & C California
Credit Managers Association of Southern California
San Diego Wholesale Credit Men's Association
Wholesalers Credit Association, Oakland

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Joseph George Distributor, San Jose
D. N. HORGAN
California & Hawaiian Sugar Company
C. C. MANGER
Crown Zellerbach Corporation
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Durkee Famous Foods
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Federal Steel & Supply Company, Fresno
E. H. WENTWORTH
Lawrence Warehouse Company

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Director, Western Division
C. B. SONNE
Standard Oil Company of California

CHAIRMAN EXECUTIVE COMMITTEES

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First Western Bank & Trust Co.

SACRAMENTO
J. DENTON
Union Oil of California

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D. E. OWEN
Law Jones Construction Co.

STOCKTON
H. J. DAMOS
Connell Motor Truck Co., Inc.

THE CREDIT MANAGERS ASSOCIATION OF NORTHERN AND CENTRAL CALIFORNIA

STATE CAPITAL
SACRAMENTO, CALIFORNIA 95814
TEL: 445-3534

DISTRICT OFFICE
SUITE 210
500 WEST BIRCH AVENUE
FRESNO, CALIFORNIA 93704
TEL: 268-2244-3293

MADERA
TEL: 205-573-3502

69-87 FORT VII

Assembly California Legislature

RULES
AGRICULTURE
LOCAL GOVERNMENT
JOINT LEGISLATIVE COUNCIL
STATE ELECTRONIC DATA
PROCURING POLICY COMMITTEE

ERNEST N. MOBLEY
ASSEMBLYMAN, THIRTY-THIRD DISTRICT
LEADER
ASSEMBLY RULES COMMITTEE

May 26, 1969

Mr. Norman A. Webster
Daily Real Estate Report
P. O. Box 125
Fresno, California

Dear Norm:

Thank you for your letter and your comments regarding the California Law Revision Committee's publication of fictitious name certificates.

We are sending your letter to the Executive Secretary of the Committee, John H. DeMouilly, and asking him to communicate with you direct regarding your thoughts on this subject.

I apologize for the delay in taking care of this and hope the matter can be worked out to your satisfaction.

With kindest regards and best wishes, I am

Sincerely yours,

ERNEST N. MOBLEY

ENM:mj

cc: John H. DeMouilly

C
O
P
Y

DAILY REAL ESTATE REPORT AND ABSTRACT OF RECORDS

DAILY COURT AND COMMERCIAL NEWSPAPER -- ESTABLISHED 1886

M. S. WEBSTER SONS, Publisher

Telephone 237-0114

2138-40 Merced Street

FRESNO 21, CALIFORNIA

April 28, 1969

Assemblyman Ernest W. Mobley
State Capitol Building
Sacramento, California

Dear Friend Ernie;

First, I want to commend you for your sincere efforts as a representative of the people in our Assembly District.

I know that you are besieged with demands and requests from various individuals and groups and realizing these time consuming communications we have endeavored to refrain from unnecessary correspondence.

Our attention has been called to a California Law Revision Committee recommendation regarding the publication of fictitious name certificates.

Present law provides for publication once a week for four weeks. It is proposed that one publication will suffice.

The purpose of legal publications is to inform the public. With only one publication such a notice could easily be overlooked. We trust that you will recognize the merit in the provision for more than one publication in important legal notices.

Kindest regards and best wishes.

Respectfully yours

DAILY REAL ESTATE REPORT

By

Norm
Norman A. Webster

NAW:ef

May 29, 1969

Mr. Norman A. Webster
Daily Real Estate Report
P. O. Box 126
Fresno, California

Dear Mr. Webster:

Assemblyman Mobley has forwarded your comments concerning the Law Revision Commission's tentative recommendation on fictitious business name certificates. The tentative recommendation is not necessarily the recommendation that the Commission will submit to the legislature. (See the "WARNING NOTE" on the cover of the enclosed tentative recommendation.)

In case you have not seen the actual tentative recommendation, I am enclosing a copy. I am also enclosing a Xerox copy of a portion of a research study prepared for the Commission which provides background information on the publication requirement. The research study does not represent the views of the Commission.

After considerable discussion whether the publication requirement should be eliminated entirely, the Commission--taking into account the views of the newspaper representatives who attended our meetings when this subject was discussed--determined to retain one publication of the fictitious business name certificates in an improved form. In this connection, it should be noted that there is now widespread noncompliance with the existing statute and that most likely there will be a substantial increase in compliance under the new statute with a resulting substantial increase in the number of certificates (to be called "statements" under the new act) that will be published.

The Commission would very much appreciate receiving any comments you may have concerning the tentative recommendation. It would be especially helpful if you could provide us with information concerning any persons who actually use the published certificates (illegal newspapers) as a source of information since we are advised that the official record in the county clerk's office is the source of information used by almost everyone interested in this information.

Mr. Webster

-2-

May 29, 1969

I believe that the tentative recommendation makes the best case possible for retention of the publication requirement. If you could suggest any revisions of this portion of the tentative recommendation that would strengthen the argument in support of retention of the publication requirement, I am sure that your suggestions would be helpful when the Commission determines what recommendation, if any, it will make to the Legislature on this subject.

Sincerely,

John H. Dellovally
Executive Secretary

JHD:aj
encs

MEMBERSHIP (INCORPORATED)
 (ALHAMBRA) POST-REPORTER
 (ALTADENA) THE ALTADENIAN
 ANGELES MESA (LOS ANGELES)
 NEWS-ADVERTISER
 THE ARCADIA TRIBUNE
 ARTERIA NEWS
 (AYALSO) THE CATALINA ISLANDER
 TUSA HERALD AND POMOTROPIC
 EDWIN PARK BULLETIN
 ZILFLOWER HERALD-ENTERPRISE
 BELL GARDENS REVIEW
 (BELL-MAYWOOD) INDUSTRIAL POST
 THE BELVEDERE CITIZEN
 BEVERLY HILLS CITIZEN
 BURBANK REVIEW
 CANOGA PARK HERALD TRIBUNE
 CHATEWORTH HERALD TRIBUNE
 CLAREMONT COURIER
 COMPTON HERALD AMERICAN AND
 THE COMPTON HERALD
 THE COVINA ARGUS-CITIZEN
 (CULVER CITY) EVENING STAR NEWS
 DOWNEY LEADER
 DOWNEY LIVE WIRE
 (DOWNEY) SOUTHEAST NEWS AND
 DOWNEY CHAMPION

THE DUARTEAM AND DUARTE DISPATCH
 EAGLE ROCK SENTINEL
 EAST LOS ANGELES GAZETTE
 EAST LOS ANGELES TRIBUNE
 EASTSIDE (LOS ANGELES) JOURNAL
 EAST WHITTIER REVIEW
 EL MONTE HERALD
 EL SEGUNDO HERALD
 EL SERENO STAR
 (FIRESTONE PARK) SOUTHEAST NEWS-PRESS
 AND FIRESTONE PARK NEWS

THE FLORENCE MESSENGER
 GARDENA VALLEY NEWS
 GLENDALE NEWS-PRESS
 GLENDORA PRESS
 GRIFFITH PARK NEWS
 HAWTHORNE PRESS
 HERMOSA BEACH REVIEW
 HIGHLAND PARK NEWS-HERALD & JOURNAL
 (HOLLYWOOD) CITIZEN NEWS
 HUNTINGTON PARK DAILY SIGNAL
 INGLEWOOD DAILY NEWS
 (LANCASTER) ANTELOPE VALLEY
 LEDGER-GAZETTE
 LA PUENTE VALLEY JOURNAL
 LAS VIRGENES ENTERPRISE
 LA VERNE LEADER

LAWNDALE TRIBUNE & NORTH MONETA
 GARDEN-LANDS TRIBUNE
 LENNOX CITIZEN
 LINCOLN HEIGHTS (LOS ANGELES)
 BULLETIN-NEWS

MITA NEWS AND LOMITA PROGRESS
 LONG BEACH INDEPENDENT
 LONG BEACH PRESS-TELEGRAM
 (LOS ANGELES) HERALD DISPATCH
 LOS ANGELES SENTINEL
 LOS FELIZ HILLS NEWS
 THE LYNWOOD PRESS
 THE MALIBU TIMES
 MANHATTAN BEACH NEWS
 THE MAYWOOD JOURNAL
 (MONROVIA) DAILY NEWS-POST AND
 MONROVIA DAILY NEWS-POST

THE MONTEBELLO NEWS
 MONTEREY PARK PROGRESS
 (MONTROSE) THE LEDGER
 NEWHALL SIGNAL AND SAUGUS ENTERPRISE
 THE NORTHWEST (LOS ANGELES) LEADER
 NORWALK CALL

(PACIFIC PALISADES) THE PALISADIAN POST
 (PALMDALE) ANTELOPE VALLEY PRESS
 THE PALOS VERDES NEWS
 THE PARAMOUNT JOURNAL
 PARKSIDE (LOS ANGELES) JOURNAL
 PASADENA STAR-NEWS
 THE PICO (LOS ANGELES) POST
 PICO-RIVERA TIMES POST
 (POMONA) PROGRESS-BULLETIN
 (REDONDO BEACH) SOUTH BAY DAILY BREEZE
 REBEDA HERALD TRIBUNE
 THE ROSEMEAD REVIEW

SAN DIMAS PRESS
 THE SAN FERNANDO VALLEY SUN
 (SAN FERNANDO VALLEY) VALLEY TIMES
 SAN GABRIEL SUN
 SAN GABRIEL VALLEY INDEPENDENT
 SAN GABRIEL VALLEY DAILY TRIBUNE
 THE SAN MARINO TRIBUNE
 SAN PEDRO NEWS-PILOT
 (SANTA MONICA) EVENING OUTLOOK
 THE SIERRA MADRE NEWS
 SIGNAL HILL TRIBUNE
 SOUTH GATE PRESS
 SOUTH PASADENA REVIEW
 SOUTHSIDE JOURNAL
 SOUTHWEST (LOS ANGELES) TOPICS-WAVE
 SOUTHWEST (LOS ANGELES) WAVE
 TARZANA HERALD TRIBUNE
 TEMPLE CITY TIMES

(TORRANCE) PRESS-HERALD
 TUNE (LOS ANGELES) NEWS-ADVERTISER
 JUNGAS) RECORD LEDGER OF
 THE VERDUGO HILLS
 THE VAN NUYS NEWS
 (VENICE) EVENING VANGUARD
 (WATTS) LOS ANGELES STAR REVIEW
 WESTCHESTER NEWS-ADVERTISER
 WESTLAKE (LOS ANGELES) POST
 WEST LOS ANGELES INDEPENDENT
 WESTWOOD HILLS PRESS
 (WHITTIER) THE DAILY NEWS
 (WILMINGTON) PRESS-JOURNAL
 AND KARBOR MAIL
 THE WILSHIRE PRESS

Los Angeles Newspaper Service Bureau

(INCORPORATED)

LEGAL ADVERTISING CLEARING HOUSE

COOPERATIVELY OWNED AND OPERATED BY
 NEWSPAPERS OF LOS ANGELES CITY AND COUNTY

ESTABLISHED 1934

220-224 WEST FIRST STREET
 LOS ANGELES, CALIFORNIA 90012
 TELEPHONE 626-1241

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 AND MANAGER
 ROBERT E. WORK, ASSISTANT
 SECRETARY-TREASURER

July 25, 1969

Mr. John H. DeMouilly
 California Law Revision Commission
 30 Crothers Hall
 Stanford University
 Stanford, California

Dear Mr. DeMouilly:

Our date book tells us that August first is the deadline for suggestions and comments on your revised proposal for asking the legislature for amendatory enactments on the fictitious firm name filing and publication laws.

Our newspapers are still opposed to your method of seeking revisions to the law. However, we do have three observations to make should it be the Commission's decision to proceed with the matter.

1. We draw your attention to the fact that in the publication of all documents placed on file, the printed matter should be an exact copy of the recorded or filed document. This is the principle followed in the publication of Uniform Commercial Code documents, sale notices under trust deed foreclosure procedure, sales of real estate in probate, etc. Such identical reproduction can leave no room for ambiguity in the notification or misinterpretation by printers or others or later legal arguments in the courts or among banks and credit people. Certainly if partners' home addresses are included in the original filing with the County Clerk, they should likewise be included in the published notice. This goes for the acknowledgement also and for all changes in the document when republication is found necessary.

On page 8 of your most recent "tentative recommendation", we note that you are still desirous of putting the County Clerk into the business of providing the members of the public with periodic summaries or compilations of filings under the statute. As we have heretofore written you, this is a function presently being well performed by numerous reporting agencies throughout the state as well as by several so-called "legal" newspapers. We are told that this is a publishing function properly belonging in the realm

July 25, 1969

realm of private enterprise which is not desired by the County Clerks and which will require additional cost in governmental overhead which public officials do not desire should such an alternative be written into the law.

3. Should it be the decision of the Law Revision Commission to proceed with the program to abbreviate or eliminate the publication factor in the fictitious firm name statutes and should it be the decision to proceed with putting County Clerks in the business of filing, recording, and publishing business records, then certainly as a matter of consistency, the County Clerks also should be ~~authorized~~ to provide the public with printed forms for the filings together with clerical assistance in filling out the forms. With such additional services from County functionaries, the public would save the expense of attorney fees, sometimes considerable, in the preparation and filing of such documents. From an attorney's standpoint, it would relieve him of the mundane details which admittedly under the filing and publication requirements are largely mechanical and routine. Actually, of the approximately 3,200 certificates published in the Southern California "legal" newspapers last year, the bulk were placed by lawyers who, under appropriate future legislation, would be able to delegate to the County Clerks the document drafting function heretofore performed by them.

We note in your present presentation of 52 mimeographed pages mention of the fact that fictitious name certificates are published in California largely in the so-called "legal" newspapers. In a previous document, it was stated that most of them were published in "legal" newspapers rather than in newspapers read by the general public. We enclose a copy of a study made by our office for the 6½ month period beginning last August 1 and ending January 18, 1969. It shows that the figure used by you of 20,000 certificates each twelve month period in Los Angeles is approximately correct. The Los Angeles record actually is 10,700 for the 6½ month period mentioned above. Of these, 7,781 were published in newspapers read by the general public. The remaining number of 3,219 were in the so-called "legal" newspapers. The Los Angeles Daily Journal with a daily circulation in excess of 7,000 published 2,500 of the 3,219 in "legal" papers or about 25 percent of the County grand total. We point out, however, that in all the Daily Journal solicitations, the prospective advertisers are handed the enclosed circular listing the local newspapers available to them for their publications at their discretion and at no expense for filing and other services offered by the Daily Journal and at competitive prices. We think that in this one aspect of your report recommending that all such notices be printed in the newspaper best equipped to give local notification you are completely correct.

We may have other observations and some objections to the program proposed by you, for presentation at a later date along with those which you have received or will receive from the California Newspaper Publishers Association.

Respectfully,

LOS ANGELES NEWSPAPER
SERVICE BUREAU, INC.

Telford Work, Secretary-Treasurer

TW:mt

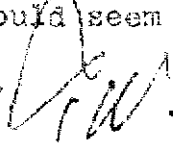
Enc. 2

CC: Calif. Newspaper Pub. Assn.
W.G. Sharp, L.A. Cty. Clerk

7-25-69
DeMouilly

P. S. : The attached copy of letter written to you on this matter last Jan. 7, 1969, by Ben Martin, General Manager of California Newspaper Publishers Association, would seem to be pertinent to your present discussion.

T.W.



SURVEY OF CERTIFICATES OF BUSINESS
FILED AND PUBLISHED IN LOS ANGELES COUNTY
(Aug. 1, 1968, to Feb. 18, 1969--6-1/2 mos.)

Month	A Total Filed	B Publ. by Community Newspapers		C Publ. by L.A. Daily Journal		Publ. by Other Papers (legal & local)		Other Papers Projected on Basis of Actuals Shown in Columns B and C	
		No.	% of Total	No.	% of Total	No.	% of Total	D Community Newspapers	E Legal Newspapers
<u>1968</u>									
Aug.	1,699	1,093	64	385	23	221	13	166	55
Sept.	1,567	895	63	373	26	159	11	113	46
Oct.	1,821	970	53	381	21	470	26	338	132
Nov.	1,604	860	54	421	26	323	20	216	107
Dec.	1,334	677	51	393	22	364	27	255	109
<u>1969</u>									
Jan.	1,948	1,064	55	523	27	361	18	242	119
Feb. (1-18)	867	538	62	249	29	80	9	54	26
<hr/>									
	10,700	6,097	57	2,625	25	1,978	18	1,384*	594
<hr/>									
82% of total									

7,481 in local newspapers of Grand Total
*Extension of the 82%
proportions to the
18% not tabulated
because no newspaper
itemization available.

The Los Angeles Daily Journal

OFFICIAL PAPER FOR CITY AND COUNTY OF LOS ANGELES

225 WEST FIRST STREET

LOS ANGELES, CALIFORNIA 90012

SPECIMEN NOTICES

**CERTIFICATE OF BUSINESS
UNDER FICTITIOUS NAME**

The undersigned do hereby certify that they are conducting a ladies ready-to-wear business as Co-Partners at 800 Atlantic Boulevard, Bell, California, under the fictitious firm name of PETITE STYLE SHOP, and that said firm is composed of the following persons, whose names and places of residence are as follows, to-wit:

Amelia Jones, 6729 Schmidt Ave., Torrance, California.
John Perriguet, 638 Fern Avenue, Inglewood, California.

Witness our hands this 30th day of August, 1960.

AMELIA JONES
JOHN PERRIGUET

State of California,
County of Los Angeles, ss.

On this 30th day of January, A.D., 1961, before me, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Amelia Jones and John Perriguet, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) L. H. MARLACHER,
Notary Public in and for the County of Los Angeles, State of California.
My Commission expires February 2, 1965.

Joe Doakes, Attorney-at-Law, 7510 Central Bldg., Los Angeles, Calif.

**CERTIFICATE OF BUSINESS,
FICTITIOUS NAME**

The undersigned does certify he is conducting a business at 4150 West Washington Boulevard, Los Angeles 18, California, under the fictitious firm name of ADVERTISING BALLOON CO., and that said firm is composed of the following person, whose name in full and place of residence is as follows:

Benjamin J. Benjamin, 920 North Sweetzer, Los Angeles 43, California.
Dated March 22, 1961.

BENJAMIN J. BENJAMIN
State of California,
Los Angeles County:

On March 22, 1961, before me, a Notary Public in and for said State, personally appeared Benjamin J. Benjamin, known to me to be the person whose name is subscribed to the within instrument and acknowledged he executed the same.

(Seal) KATHRYN GRAHAM,
Notary Public.

Certificate of Business

County Clerk's Filing Fee	\$ 2.00
Minimum Publication	\$20.00
Total	\$22.00

Payable in advance unless previous arrangements have been made for credit.

Enclosed is a set of blank forms of CERTIFICATE OF BUSINESS, Fictitious Firm Name, for your convenience. See the law on the reverse side of the enclosed forms.

We shall be glad to take care of the filing of the original Certificate at the County Clerk's office as required by law, publish the notice once a week for four successive weeks as required by law, and at the end of such publication, without added charge, file our sworn proof of publication with the County Clerk as required by law, and send you a copy for your records.

If you desire a newspaper other than The Daily Journal to publish your Certificate please mark the enclosed list of newspapers with your preference and return the marked list with your copies and check.

Our minimum charge for publication is \$20.00, up to three partners' names, and one Notary jurat. This covers the entire four weeks' publication. The County Clerk's statutory filing fee of two dollars should be added by you to this publication charge, if we are to file the Certificate for you.

One caution: Despite any "free advice" offered you, we recommend that on any questions of a legal nature in connection with this publication or with any other matter, you promptly consult an attorney-at-law.

The Los Angeles Daily Journal offers you many other advantages, foremost of which is PROMPT, efficient publication reaching a wide audience of readers. The Journal is published EVERY day except Saturdays and Sundays. It has been publishing since 1888, and its daily circulation of 6,000 gives you valuable advertising.

We hope that you will call upon us if we can be of service.

Very truly yours

THE LOS ANGELES DAILY JOURNAL

NEWSPAPER CHECK LIST

If you prefer that publication of your Certificate of Business be made once a week for four weeks (as required by law) in a local newspaper of your community please check on the list below the newspaper of your preference. The publication price of \$20 is standard for all of the newspapers listed, plus the county clerk's filing fee of \$2.00. We will provide the usual service in filing, file stamps, proof of publication, etc. Please attach check for \$22 to the Certificate forms when you return them in the enclosed, self-addressed reply envelope.

LOS ANGELES DAILY JOURNAL
220 W. 1st St., L.A. 90012
Telephone MADison 5-2141

Names shown in parentheses are not part of newspapers' official titles.

- | | |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input type="checkbox"/> (Alhambra) Post-Advocate | <input type="checkbox"/> The Lynwood Press |
| <input type="checkbox"/> (Altadena) The Altadenian | <input type="checkbox"/> The Malibu Times |
| <input type="checkbox"/> Angeles Mesa (Los Angeles) News-Advertiser | <input type="checkbox"/> Manhattan Beach News |
| <input type="checkbox"/> The Arcadia Tribune | <input type="checkbox"/> The Maywood Journal |
| <input type="checkbox"/> Artesia News | <input type="checkbox"/> Monrovia Daily News-Post |
| <input type="checkbox"/> (Avalon) The Catalina Islander | <input type="checkbox"/> The Montebello News |
| <input type="checkbox"/> Azusa Herald and Pomotronic | <input type="checkbox"/> Monterey Park Progress |
| <input type="checkbox"/> Baldwin Park Bulletin | <input type="checkbox"/> (Montrose) The Ledger |
| <input type="checkbox"/> Bellflower Herald-Enterprise | <input type="checkbox"/> Newhall Signal & Saugus Enterprise |
| <input type="checkbox"/> Bell Gardens Review | <input type="checkbox"/> The Northwest (Los Angeles) Leader |
| <input type="checkbox"/> (Bell-Maywood) Industrial Post | <input type="checkbox"/> Norwalk Call |
| <input type="checkbox"/> The Belvedere Citizen | <input type="checkbox"/> (Pacific Palisades) The Palisadian-Post |
| <input type="checkbox"/> Beverly Hills Citizen | <input type="checkbox"/> (Palmdale) Antelope Valley Press |
| <input type="checkbox"/> Burbank Review | <input type="checkbox"/> The Palos Verdes News |
| <input type="checkbox"/> Canoga Park Herald-Tribune | <input type="checkbox"/> The Paramount Journal |
| <input type="checkbox"/> Chatsworth Herald-Tribune | <input type="checkbox"/> Pasadena Independent |
| <input type="checkbox"/> Claremont Courier | <input type="checkbox"/> Pasadena Star News |
| <input type="checkbox"/> Compton Herald American and The Compton Herald | <input type="checkbox"/> The Pico (Los Angeles) Post |
| <input type="checkbox"/> The Covina Argus-Citizen | <input type="checkbox"/> Pico-Rivers News |
| <input type="checkbox"/> (Culver City) Evening Star News | <input type="checkbox"/> Pico-Rivers Times-Post |
| <input type="checkbox"/> Downey Live Wire | <input type="checkbox"/> (Pomona) Progress-Bulletin |
| <input type="checkbox"/> Downey Southeast News & Downey Champion | <input type="checkbox"/> (Redondo Beach) South Bay Daily Breeze |
| <input type="checkbox"/> Duarte | <input type="checkbox"/> Raceda Herald-Tribune |
| <input type="checkbox"/> Eagle Rock Sentinel | <input type="checkbox"/> The Rosemead Review |
| <input type="checkbox"/> East Los Angeles Gazette | <input type="checkbox"/> San Dimas Press |
| <input type="checkbox"/> East Los Angeles Tribune | <input type="checkbox"/> The San Fernando Sun |
| <input type="checkbox"/> East Whittier Review | <input type="checkbox"/> (San Fernando Valley) Valley Times |
| <input type="checkbox"/> Eastside (Los Angeles) Journal | <input type="checkbox"/> San Gabriel Valley Daily Tribune |
| <input type="checkbox"/> El Monte Herald | <input type="checkbox"/> San Gabriel Valley Independent |
| <input type="checkbox"/> El Segundo Herald | <input type="checkbox"/> The San Marino Tribune |
| <input type="checkbox"/> El Sereno Star | <input type="checkbox"/> San Pedro News-Pilot |
| <input type="checkbox"/> (Firestone Park) Southeast News-Press and Firestone Park News | <input type="checkbox"/> (Santa Monica) Evening Outlook |
| <input type="checkbox"/> The Florence Messenger | <input type="checkbox"/> The Sierra Madre News |
| <input type="checkbox"/> Gardena Valley News | <input type="checkbox"/> Signal Hill Tribune |
| <input type="checkbox"/> Glendale News-Press | <input type="checkbox"/> South Gate Press |
| <input type="checkbox"/> Glendora Press | <input type="checkbox"/> South Pasadena Review |
| <input type="checkbox"/> Griffith Park News | <input type="checkbox"/> Southwest (Los Angeles) Topics-Wave |
| <input type="checkbox"/> Hawthorne Press | <input type="checkbox"/> Southwest (Los Angeles) Wave |
| <input type="checkbox"/> Hermosa Beach Review | <input type="checkbox"/> Tarzana Herald-Tribune |
| <input type="checkbox"/> Highland Park News-Herald | <input type="checkbox"/> Temple City Times |
| <input type="checkbox"/> (Hollywood) Citizen-News | <input type="checkbox"/> Topanga Journal and Malibu Monitor |
| <input type="checkbox"/> Huntington Park Daily Signal | <input type="checkbox"/> Torrance Herald |
| <input type="checkbox"/> Inglewood Daily News | <input type="checkbox"/> Tribune (Los Angeles) News-Advertiser |
| <input type="checkbox"/> La Puente Valley Journal | <input type="checkbox"/> (Tujunga) Record Ledger of The Verdugo Hills |
| <input type="checkbox"/> La Verne Leader | <input type="checkbox"/> The Van Nuys News |
| <input type="checkbox"/> (Lancaster) Antelope Valley Ledger-Gazette | <input type="checkbox"/> (Vanice) Evening Vanguard |
| <input type="checkbox"/> Lawndale Tribune & North Moneta Garden-Lands Tribune | <input type="checkbox"/> (Waits) Los Angeles Star Review |
| <input type="checkbox"/> Lincoln Heights (Los Angeles) Bulletin-News | <input type="checkbox"/> Westchester News-Advertiser |
| <input type="checkbox"/> Lomita News and Progress | <input type="checkbox"/> Westlake (Los Angeles) Post |
| <input type="checkbox"/> Long Beach Independent | <input type="checkbox"/> West Los Angeles Independent |
| <input type="checkbox"/> Long Beach Press-Telegram | <input type="checkbox"/> Westwood Hills Press |
| <input type="checkbox"/> Los Angeles Sentinel | <input type="checkbox"/> The (Whittier) Daily News |
| <input type="checkbox"/> Los Angeles Herald Dispatch | <input type="checkbox"/> Wilmington Press-Journal and Harbor Mail |
| <input type="checkbox"/> Los Feliz Hills News | <input type="checkbox"/> The Wilshire Press |
| | <input type="checkbox"/> Woodland Hills Reporter |

California

Newspaper Publishers Association, Inc.

1127 - 11th Street, Sacramento (95814) (916) 447-1677

BEN D. MARTIN, General Manager • MICHAEL B. DORRIS, Legislative Representative

January 7, 1969

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford, California

Dear Mr. DeMouilly:

You are correct. We were not aware that the Commission will be meeting in Los Angeles Friday to discuss again the Fictitious Name Statute.

But as long as we are being invited merely as observers, I shall not worry about not having a staff member present, but will attempt to persuade a publisher to attend and observe.

It probably is just as well, anyway, that we now rest our case in defense of publication on the excellent findings of your legal research, the previous recommendations by your staff and the arguments favoring publication as cited in your most recent staff memo.

It will be unfortunate if the Commission does not take into consideration the evidence uncovered by your study and that of Gordon McClintock which definitely points to a trend among the states toward adopting statutes requiring publication.

We would hope this, plus the many reasons supporting publication, which were so well cited in brief on page 1 of Jack Horton's Memorandum 69-110, would be sufficient to cause the Commission to recognize the merit in your recommendation (as cited in Memorandum 68-64, page 3) and that of Mr. McClintock (as cited on pages 1388 and 1389 of his Hastings Law Journal article) and thus vote to retain publication, with some strengthening modifications which we hope might be worthwhile.

The information uncovered by Mr. McClintock which points out the definite trend among the states to incorporate publication requirements should be noted by the Commission.



Mr. John H. Doolittle
January 7, 1969
Page 2

It shows that, while four states many years ago adopted and then repealed publication, in the past 15 years six states have added publication.

Much mention is made of the fact that New York, the number two state in population, repealed its 1833 law requiring publication; but the same legal research reveals that today, three of the top five states in population now require publication (California, Pennsylvania and Illinois, the latter having amended its existing statute just five years ago to ADD publication and a penalty clause for not publishing).

Incidentally, it appears from the research that all of the statutes adding publication in recent years have included a penalty clause, or have added such a clause to an existing statute.

If any "trend" has been developed by studies conducted by Mr. McClintock and by your staff, it clearly shows that among larger states in particular, the trend in modern times definitely has been to discover that publication does afford the many social and economic benefits cited by Mr. Horton's Memorandum 68-110.

I need not add that we will be most interested in the Commission's conclusions on Friday.

Sincerely yours,

Ben D. Martin
General Manager

BDM:pah

cc: Sho Sato
Joseph A. Ball
Senator Alfred Son
Roger Arnebergh
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STATE OF CALIFORNIA

RONALD REAGAN, Governor

DEPARTMENT OF CORPORATIONS

ANTHONY R. PIERNO
CommissionerLos Angeles, California
August 11, 1969

IN REPLY REFER TO:

FILE NO. _____

California Law Revision Committee
Stanford University
School of Law
Palo Alto, California

ATTENTION: Mr. John DeMouilly

Gentlemen:

In response to your request, following are a few comments concerning the proposed changes in the California "Fictitious name" statute.

COVERAGE OF STATUTE:

The proposed changes to the now existent statute would provide (with some exceptions) a requirement of filing a fictitious-name statement by every person who regularly transacts business in this state for profit under a fictitious name.

There are two definitional problems that may be posed with this provision. The first concerns the limits of "regularly": A quantitative or time value is not implied with the use of the term. This would have, of course, a disadvantage to some out-of-state businesses who may unknowingly cross a line from "occasionally" to "regularly" doing business in this state.

Secondly, is the question of what is meant by "in this state." Questions will arise as to whether, for example, a mail-order house operating out of California would be subject to the provisions, or if solicitations made in California culminating in sales outside of the borders of California would be considered as being in this state.

PLACE OF FILING STATEMENTS:

It is proposed that a person be required to comply with the statute by filing his statement in the office of the County Clerk of the county in which he has his principal place of business and in the absence of such a principal place of business as in the case of an out-of-state business, the filing would be made in the Office of the County Clerk of Sacramento County.

If the aim of the statute is to provide a place where the public can obtain information, there arises a problem with the company that has a principal place of business in one county and its contact with the public in many other counties. If the business is multiple county in scope, a member of the public will have difficulty in determining where to look for the filed statement. It may be on file with any one of several counties, or not at all.

Because of the generally wider territorial scope of businesses as compared to the time when the first provisions for the filing of fictitious-name statements were enacted, it seems more logical to have a system of central filing in the state.

PUBLICATION:

The proposed Section 17915 would require publication of notice of filing a fictitious business name within 30 days after the statement is filed. The publication would be made in a newspaper of general circulation in the county in which the principal place of business of the registrant is located or if no such newspaper in that county, any newspaper of general circulation in an adjoining county. The times of publication would be cut from four consecutive weeks to a one-time publication.

Aside from the problems of determining in precisely which county businesses are to make publication, there is the basic consideration of the concept of publication itself. If the thrust of the proposed changes to the legislation is to more adequately protect the public, it seems incongruous that provisions would be continued for the publication of notice since it is probably the least likely method of notifying anyone of the general public. First of all, the publication in the more metropolitan areas is generally made through legal periodicals which are not read by the general public, but are newspapers which circulate to attorneys and a portion of the commercial world. Secondly, actual notice is not effectuated by a publication at the time it is needed. A person generally needs to know of the principals involved in a business at the time during or after which he has dealt with them. The publication, of course, if properly made, is usually prior to the time that the public comes in contact with the fictitiously-named company.

SANCTIONS:

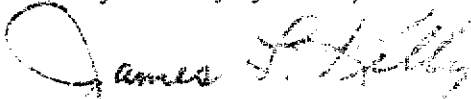
The civil penalty of \$300 for non-compliance, enforced by a civil action prosecuted by the county counsel or district attorney seems to have serious problems. The penalty may be too great where a

person inadvertently fails to file within 40 days of operating a business, or where there is some question whether an out-of-state partnership is regularly doing business in this state, is "regularly doing business" or doing business "in this state" at all. On the other hand, a disreputable company may find that \$300 is a bargain price for remaining anonymous. The prosecution of such cases would lead to some anomalies since the small, more rural, counties where identity may be hard to conceal, would find that because of a lack of pressing matters in other areas would have a very zealous county counsel or district attorney prosecuting \$300 claims with regularity. In the more metropolitan counties, where there would seem to be more demand for identities being made known by the filing of statements, prosecutions would not be forthcoming with the same zeal since the press of criminal and civil litigation would not afford the time to the prosecutors.

Other enforcement alternatives should be considered. For example, prior to opening a bank account or obtaining telephone service in a fictitious business name, evidence may be required that compliance has been made with the statute.

In conclusion, the law might more justifiably be revised so as to provide for a central filing point, eliminate the requirement for publication and provide a more self-regulating structure to gain compliance rather than through the use of courts.

Very truly yours,



JAMES L. KELLY
Chief Deputy Commissioner

JLK:mc f

Los Angeles Newspaper Service Bureau

(INCORPORATED)

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August 14, 1969

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford, California

Dear Mr. DeMouilly:

In answer to your letter of July 29 as to whether there has been any change or modification in the opposition of our organization to your recommendation that the Law Revision Commission and the legislature be asked to emasculate publication requirements in the fictitious firm name publication law, the answer is no. I have discussed this matter with members of our group and the feeling is that if amendments to the present publication provisions are necessary they should be provided by the newspaper associations as was done a number of years ago in publication amendments under the probate and civil codes.

Neither will we feel any kindlier toward the amendatory regulations simply through the omission of the provision in your tentative recommendations that the County Clerks be permitted to sell periodic summaries or compilations of fictitious firm name filings.

We are quite sure that collectors' associations and credit managers' associations of the state share our views on these matters, as of course does the California Newspaper Publishers Association.

Sincerely yours,

LOS ANGELES NEWSPAPER
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TW:mt

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AND FIRESTONE PARK NEWS
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CORPORATIONS CODE

PART 3. REAL ESTATE INVESTMENT TRUSTS [NEW]

Sec.

- 23000. Real estate investment trust defined.
- 23001. Limitation of liability of shareholders or beneficiaries.
- 23002. Conclusiveness of permit finding trust to exist; persons concluded.
- 23003. Prohibition against issuance of security redeemable at holder's option.

Part 3 was added by Stats.1961, c. 1976, p. 4160, § 1.

§ 23000. Real estate investment trust defined

A real estate investment trust is an unincorporated trust or association which complies or intends to comply with Sections 856, 857 and 858 of the Federal Internal Revenue Code of 1954, as amended,¹ or such section or sections of any subsequent Internal Revenue Code as may be applicable to organizations described in Public Law 86-770.² (Added Stats.1961, c. 1976, p. 4160, § 1, effective July 20, 1961.)

¹ 24 U.S.C.A. (I.R.C.1954) §§ 856, 857, 858.

² 1960 U.S. Code Conf. & Adm. News, pp. 1258-1402.

Law Review Commentaries

Real estate trusts: California security regulations. Jack E. Roberts (1962) 7 U. C.L.A. Law R. 544, 545.

Library references: Banks and Banking 2210 et seq.; C.J.S. Banks and Banking § 1044 et seq.

§ 23001. Limitation of liability of shareholders or beneficiaries

The shareholders or beneficiaries of a real estate investment trust shall not, as such, be personally liable for any of its obligations arising after the effective date of this part, nor shall persons who become shareholders or beneficiaries after the effective date of this part be personally liable, as such, for obligations of the real estate investment trust existing on the effective date of this part. (Added Stats.1961, c. 1976, p. 4160, § 1, effective July 20, 1961.)

Law Review Commentaries

Shareholders' liability in real estate investment trusts. (1962) 66 C.L.R. 694.

§ 23002. Conclusiveness of permit finding trust to exist; persons concluded

A permit issued by the Commissioner of Corporations finding that an unincorporated trust or association is a real estate investment trust shall be conclusive evidence thereof, so far as Section 23001 is concerned, as to all persons who become shareholders or beneficiaries of the unincorporated trust or association after the issuance of the permit and prior to its suspension or revocation, if any, and as to all obligations of the unincorporated trust or association arising after the effective date of this part, whether they arose before or after the permit was issued, and prior to suspension or revocation of the permit. Expiration of the issuance authority in the permit shall not be deemed a suspension or revocation within the meaning of this section. (Added Stats.1961, c. 1976, p. 4170, § 1, effective July 20, 1961.)

§ 23003. Prohibition against issuance of security redeemable at holder's option

A real estate investment trust shall not issue any security redeemable at the option of the holder of the security. (Added Stats.1961, c. 1976, p. 4170, § 1, effective July 20, 1961.)

**PART 4. LIABILITY; LEVIES AGAINST PROPERTY;
DESIGNATION OF AGENT FOR SERVICE AND OF
PRINCIPAL OFFICE [New]**

- Sec.**
24000 Definitions.
24001 Scope of liability.
24002 Levy on property.
24003 Statement of unincorporated association; form.
24004 Numbering and filing statements; indexing; issuance of certificate.
24005 Statement of resignation of agent; filing; effect; revocation of designation.
24006 Notice of expiration.
24007 Service of process on unincorporated associations in certain cases.

Part 4 added by Stats.1967, c. 1324, p. 3153, § 6.

§ 24000. Definitions

(a) As used in this part, "unincorporated association" means any partnership or other unincorporated organization of two or more persons, whether organized for profit or not, but does not include a government or governmental subdivision or agency.

(b) As used in this section, "person" includes a natural person, corporation, partnership or any other unincorporated organization, and a government or governmental subdivision or agency.

(Added Stats.1967, c. 1324, p. 3153, § 6.)

Law Revision Commission Comment

Section 24000 provides a definition that includes all private unincorporated associations of any kind and excludes all governmental entities, authorities, boards, bureaus, commissions, departments, and associations of any kind.

Although subdivision (a) provides that a governmental entity or agency is not an unincorporated association under this part, subdivision (b) provides that an unincorporated association is subject to this part even though its membership may include governmental entities or agencies.

§ 24001. Scope of liability

(a) Except as otherwise provided by statute, an unincorporated association is liable to a person who is not a member of the association for an act or omission of the association, and for the act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a natural person.

(b) Nothing in this section in any way affects the rules of law which determine the liability between an association and a member of the association.

(Added Stats.1967, c. 1324, p. 3153, § 6.)

Law Revision Commission Comment

Section 24001 provides that unincorporated associations are liable for acts or omissions done by or under the authority of the association to the same extent that natural persons are liable. The exception at the beginning of the section is intended to avoid the repeal of any statutory limitations on association liability, such as that found in Section 2140 of the Corporations Code (relating to death benefits payable by unincorporated fraternal societies).

Section 24001 is probably declarative of the prior California law insofar as the tort liability of unincorporated associations is concerned. See *Inglis v. Operating Engineers Local Union No. 12*, 58 Cal.2d 269, 23 Cal.Rptr. 402, 373 P.2d 467 (1962); *Marshall v. Int'l Longshoremen's & Warehousemen's Union*, 57 Cal.2d 781, 22 Cal.Rptr. 211, 371 P.2d 957 (1962).

Whether Section 24001 is declarative of the prior California law relating to the

contractual liability of unincorporated associations is uncertain. In the absence of statute, a contract of an unincorporated association was regarded as the contract of the individual members of the association who authorized or ratified the contract. *Pacific Freight Lines v. Valley Motor Lines, Inc.*, 72 Cal.App.2d 505, 164 P.2d 901 (1946); *Security-First Nat'l Bank v. Cooper*, 63 Cal.App.3d 653, 145 P.2d 722 (1944); *Leake v. City of Venice*, 50 Cal.App. 462, 195 Pac. 440 (1920). By statute, however, unincorporated associations have been authorized to enter into a wide variety of transactions and thus incur liability on behalf of the association. See, e.g., *Com. Code § 1201(28)*, (29), (30); *Corp. Code § 21209*; *Labor Code § 1126*. Section 24001 eliminates whatever gaps may have remained in the previous statutory provisions making unincorporated associations responsible for their contractual obligations.

§ 24002. Levy on property

Only the property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association.
(Added Stats.1967, c. 1324, p. 3153, § 6.)

Law Revision Commission Comment

Section 24002 permits the plaintiff to resort only to the assets of an unincorporated association to satisfy a judgment against the association. Of course, nothing in the section precludes the plaintiff from also resorting to the individual property of a member of the association to satisfy a judgment against the member in a case where the member was also a party defendant. The procedure provided by Code of Civil Procedure Sections 414 and 982-994 may also be available in a case where the members of the association are jointly liable with the association on a contract and are named as joint defendants. Insofar as Section 24002 provides that the assets of the association may be levied upon to satisfy a judgment against the

association, it restates the law formerly stated in Code of Civil Procedure Section 388. The former version of Section 388 also authorized satisfaction of the judgment against the association from the individual assets of a member who had been served with process in the action against the association. However, a 1952 amendment to Code of Civil Procedure Section 416 precluded this unless the summons served on the member indicated that service was being made upon him in his individual capacity. Under Section 24002, it is necessary not only to serve any individual member in his individual capacity but also to name him as a defendant before a judgment can be obtained that may be satisfied from his individual assets.

§ 24003. Statement of unincorporated association; form

(a) An unincorporated association may file with the Secretary of State on a form prescribed by him a statement containing either of the following:

(1) A statement designating the location and complete address of the association's principal office in this state. Only one such place may be designated.

(2) A statement (i) designating the location and complete address of the association's principal office in this state in accordance with paragraph (1) or, if the association does not have an office in this state, designating the complete address of the association to which the Secretary of State shall send any notices required to be sent to the association under Sections 24005 and 24006, and (ii) designating as agent of the association for service of process any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall set forth his complete business or residence address. If a corporate agent is designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town, or village wherein it has the office at which the association designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5, or 6403.6.

(c) Presentation for filing of a statement and one copy, tender of the filing fee, and acceptance of the statement by the office of the Secretary of State constitutes filing under this section. The Secretary of State shall note upon the copy of the statement the file number and the date of filing the original and deliver or send the copy to the unincorporated association filing the statement.

(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent, or (2) if the association has designated a corporate agent, at the office of such corporate agent, in the city, town, or village named in the statement filed by the association under this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5 if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 6403.6, constitutes valid service on the association. 2

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee prescribed in Government Code Section 12183 for filing a designation of agent.

(Added Stats.1967, c. 1324, p. 3153, § 6.)

Filing by secretary of state, see note under section 24004.

Legislative Committee Comment—Senate

Sections 24003-24006 provide a procedure whereby an unincorporated association may designate a principal office in this state for venue purposes (Code of Civil Procedure Section 395.2) and an agent upon whom service of process may be made (subdivisions 2.1 and 2.2 of Section 411 of the Code of Civil Procedure). See the Comments to Code of Civil Procedure Sections 395.2 and 411. See also Corporations Code Section 15760.

The procedure provided by Sections 24003-24006 is designed to permit the use of

automatic data processing equipment in recording and indexing the statements filed by unincorporated associations. The procedure is based in part on Commercial Code provisions relating to the filing of financing statements. See Commercial Code Sections 9401 and 9407.

Section 24003 also is based in part upon Corporations Code Section 3361 but the designation of an agent is permissive rather than mandatory.

§ 24004. Numbering and filing statements; indexing; issuance of certificate

(a) The Secretary of State shall mark each statement filed under Section 24003 with a consecutive file number and the date of filing. He may destroy or otherwise dispose of any such statement four years after the statement expires. In lieu of retaining the original statement, the Secretary of State may retain a copy thereof in accordance with Government Code Section 14756.

(b) The Secretary of State shall index each statement filed under Section 24003 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and his address.

(c) Upon request of any person, the Secretary of State shall issue his certificate showing whether, according to his records, there is on file in his office, on the date and hour stated therein, any presently effective statement filed under Section 24003 for an unincorporated association using a specific name designated by the person making the request. If such a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for such a certificate is two dollars (§2).

(d) When a statement has expired under subdivision (d) of Section 24003, the Secretary of State shall enter that fact in the index together with the date of such expiration.

(e) Four years after a statement has expired, the Secretary of State may delete the information concerning that statement from the index.

(Added Stats.1967, c. 1324, p. 3153, § 6.)

Library references

Associations C-218.

C.J.S. Associations § 19 et seq.

Section 7 of Stats.1967, c. 1324, p. 3156 provided: "A statement may be presented

to the Secretary of State for filing at any time after the effective date of this act but the secretary of state is not required to file such statement prior to January 1, 1968, and no such statement is effective until January 1, 1968.

Legislative Committee Comment—Senate

See Comment to Section 24003.

§ 24005. Statement of resignation of agent; filing; effect; revocation of designation

(a) An agent designated by an unincorporated association for the service of process may file with the Secretary of State a written statement of resignation as such agent which shall be signed and execution thereof shall be duly acknowledged by the agent. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement by mail to the unincorporated association at its address as set out in the statement filed by the association.

(b) Any unincorporated association may at any time file with the Secretary of State a revocation of a designation of an agent for service of process. The revocation is effective when filed.

(c) Notwithstanding subdivisions (a) and (b), service made on an agent designated by an unincorporated association for service of process in the manner provided in subdivision (c) of Section 24003 is effective if made within 30 days after the statement of resignation or the revocation is filed in the office of the Secretary of State. (Added Stats.1967, c. 1324, p. 3153, § 6.)

Legislative Committee Comment—Senate

In order that the plaintiff may rely upon a certificate from the Secretary of State indicating the designation of an agent for service of process for 30 days from the date of the certificate, service on such agent is permitted during the 30-day period following the filing of the statement of resignation or the revocation. Where the

designation of an agent for service of process is deemed revoked by the filing of a new statement under subdivision (c) of Section 24003, this 30-day period commences to run from the date of the filing of the new statement that superseded the statement designating the agent for service of process.

§ 24006. Notice of expiration

Between the first day of October and the first day of December immediately preceding the expiration date of a statement filed under Section 24003, the Secretary of State shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the unincorporated association at its address as set out in the statement. Neither the failure of the Secretary of State to mail the notice as provided in this section nor the failure of the notice to reach the unincorporated association shall continue the statement in effect after the date of its expiration. Neither the state nor any officer or employee of the state is liable for damages for failure to mail the notice as required by this section.

(Added Stats.1967, c. 1324, p. 3153, § 6.)

Legislative Committee Comment—Senate

Section 24006 is included to minimize the danger that the unincorporated association will be unaware of the impending expiration of the statement.

§ 24007. Service of process on unincorporated associations in certain cases

If designation of an agent for the purpose of service of process has not been made as provided in Section 24003, or if the agent designated cannot with due diligence be found at the address specified in the index referred to in Section 24004 for personal delivery of the process, and it is shown by affidavit to the satisfaction of a court or judge that personal service of process against an unincorporated association cannot be made with the exercise of due diligence upon an officer or agent referred to in subdivision 2.1 of Section 411 of the Code of Civil Procedure, the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.

(Added by Stats.1968, c. 132, p. —, § 4, urgency, operative Nov. 13, 1968.)

Operative date, see note under Code of Civil Procedure 411.

Library references
Associations § 29(4).
C.J.S. Associations § 34 et seq.

Law Revision Commission Comment

1968 Amendment

Section 24007 is based on Corporations Code Section 3402 relating to service upon a domestic corporation, but service is made on one or more of the members of the association designated in the order rather than upon the Secretary of State.

"Due diligence" means a systematic investigation and inquiry conducted in good faith by the party. The affidavit must show facts indicating sincere desire and an honest effort to locate the defendant. See Civil Procedure Before Trial 502 (Cal.Cont. Ed.Bari). Moreover, the following statements from *Blue v. Quinn*, 137 Cal. 651, 656, 557, 66 Pac. 216, 70 Pac. 732 (1902) are pertinent:

If the facts set forth in the affidavit have a legal tendency to show the exercise of diligence on behalf of the plaintiff in seek-

ing to find the defendant within the state, and that after the exercise of such diligence he cannot be found, the decision of the judge that the affidavit shows the same to his satisfaction is to be regarded with the same effect as is his decision upon any other matter of fact submitted to his judicial determination.

From the nature of the question to be determined, the diligence thereon must to a very great extent be hearsay, and the number and character of persons inquired of must in each case be determined by the judge. Diligence is in all cases a relative term, and what is due diligence must be determined by the circumstances of each case.

Memorandum 69-87

EXHIBIT XIII

GENDEL, RASKOFF, SHAPIRO & QUITTER

NATHAN GENDEL
P. MILLS RASKOFF
BERNARD SHAPIRO
ARNOLD B. QUITTER
EARL A. SLICK
LEONARD G. LEBROW
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ATTORNEYS AT LAW
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August 18, 1969

IN REPLY PLEASE REFER TO

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Re: COMMITTEE ON COMMERCIAL CODE

Dear Mr. Fuller:

Due to time requirements I borrowed Harold Marsh's Fictitious Business Name documentation and correspondence. As my report to the Committee, in anticipation of a possible Committee meeting, my reactions are as follows:

(1) There is an obvious need for updating the statutory enactments governing fictitious business names (or dba's, as we know them).

(2) I would have to fully agree with Harold Marsh's May 27, 1969 comments on the tentative (April 4, 1969) Commission recommendations.

(3) Proposed section 17910 requires "Every person who regularly transacts business in this state for profit under a fictitious business name..." to comply. Someplace, either in the proposed statute revisions or in the Commission report, there should be a definition of the word "regularly". This one word constitutes the guts or coverage for the entire statute, and not to aid the legal profession and the courts with a guide to the intent of the legislature would be a disservice to the future, considering the legal vagueness of the word "regularly". Is it once a month, five times a month, twelve times a year, etc.? In the same vein, one other possible problem might arise and that is the area of "profit" intended to be covered. Are eleemosynary, charitable or other tax exempt entities not to be covered, even though the particular activity involved may encompass the creation of income to the entity?

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(4) Since remedial legislation is the obvious purpose of the Commission, I do not see how we can overemphasize the value of central filing in the office of the Secretary of State (please see Marsh's May 27, 1969 letter, paragraph 3). Proposed Section 17913 goes off on the traditional requirement of filing with the county clerk where the principal place of business is, or with the clerk of Sacramento County. If the Commission, for local political reasons, wishes to retain local filing, I guess there's not much we can do about it, but not to take advantage of the central filing now available because of the Commercial Code requirements is indeed unfair to the problem faced by both lawyers and courts.

(a) This leads one to reexamine the philosophy behind Section 17915, which proposes to continue publication requirements. Other than the recognition of the strength of the newspaper lobby there seems to be no real value to publication. Perhaps yes in 1872, when travel was difficult, communication was not what we have today, and population sections were small and intimate. But today, what business man really reads the Metropolitan News, the Los Angeles Daily Journal, etc., to determine who is using a d.b.a.? He either goes to a credit bureau, or to his lawyer. Both of these entities then go to the county clerk's office, and this could entail checking with many offices until the "right" one is found.

With central filing we eliminate wasteful and useless publication and we easily make available the entire list of fictitious business names and the information required by the revised statute. Proper indices can keep required current information where we have access to the electronic information made available through the office of the Secretary of State. Let's eliminate the horse and buggy requirements needed to satisfy selfish lobby interests. Gordon McClintock's Hastings Law Journal article is a good guide.

GENDEL, RASKOFF, SHAPIRO & QUITNER

Maurice D. L. Fuller, Sr., Esq.

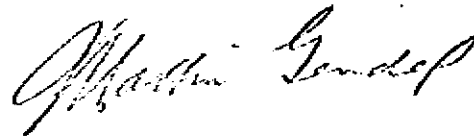
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(5) Section 17924 covers penalties and I don't know if up to \$300 (for one year) is too much or too little. I can certainly guess that the county counsel or district attorney involved, where there's no criminal fraud, will have to be very overstuffed before he will prosecute. This section seems rather esoteric, particularly in light of subdivision (d) which changes the present law abating a suit if there is non-compliance by the plaintiff and specifically providing in the proposed legislation that "No contract or transaction is impaired because a party to the contract or transaction has failed to comply with this chapter." If a corporation fails to pay the Franchise Tax Commissioner and is suspended it isn't treated so cavalierly.

At the least I would return the present plea in abatement and I would seriously consider giving the aggrieved party in a civil action the right to recover certain monetary sanctions (e.g., the \$300.00) rather than to expect a county counsel or district attorney to show any real interest in invoking such a mild civil monetary sanction.

Cordially yours,



MARTIN GENDEL

MG:mm

cc: Members of the Committee
on the Commercial Code
Mr. John D. Demouilly,
California Law Revision Committee
Karl E. Zellmann, Asst. Secretary

Revised April 4, 1969

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

FICTITIOUS BUSINESS NAMES

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NOTE: COMMENTS OF INTERESTED PERSONS AND ORGANIZATIONS MUST BE IN THE HANDS OF THE COMMISSION NOT LATER THAN AUGUST 4, 1969, IN ORDER THAT THEY MAY BE CONSIDERED BEFORE THE COMMISSION'S RECOMMENDATION ON THIS SUBJECT IS SENT TO THE PRINTER.

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

TENTATIVE RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

FICTITIOUS BUSINESS NAMES

BACKGROUND

Since its enactment in 1872, the California Civil Code has contained provisions regulating the use of "fictitious" names¹ for business purposes. Although the filing and publication requirements imposed by the so-called "fictitious name statute"--Civil Code Sections 2466-2471--have undergone minor changes over the years, the essential features of the system have endured for almost a century.

The statute requires every person² or partnership transacting

¹ A "fictitious" name is one that does not include the names of all the partners or the name of the individual owner of the business. A name is not "fictitious" if it includes the surname of each partner or of the individual owner. See *Flora v. Hankins*, 204 Cal. 351, 263 Pac. 331 (1928) (partners doing business under the name "Flora & Mahedy"); *Pendleton v. Cline*, 85 Cal. 142, 24 Pac. 659 (1890) (partners doing business under name "Pendleton & Williams"); *Kohler v. Stephenson*, 39 Cal. App. 374, 178 Pac. 970 (1919) (individual doing business as "Kohler Steam Laundry"). The cases are not completely consistent, but it appears that a name is not a fictitious name merely because it includes the word "company." Compare *Vagin v. Brown*, 63 Cal. App.2d 504, 146 P.2d 923 (1944) (individual doing business as "Vagin Packing Company" is not using a fictitious name); with *Andrews v. Glick*, 205 Cal. 699, 272 Pac. 537 (1928) ("Andrews-Cordano Plumbing Company"); *Collection Service Corp. v. Conlin*, 98 Cal. App. 686, 277 Pac. 749 (1929) ("Alles Printing Company"). See *Witkin*, 3 Summary of California Law 2265 (1960).

² The term "person" includes a corporation doing business under a name other than the one set forth in its articles of incorporation. *Berg Metals Corp. v. Wilson*, 170 Cal. App.2d 559, 339 P.2d 869 (1959). The statute does not apply to foreign commercial or banking partnerships established and transacting business outside the United States. Civil Code § 2467. Nor does it apply to persons not maintaining a place of business in this state. *Moon v. Martin*, 185 Cal. 361, 197 Pac. 77 (1921).

business in a fictitious name, or a designation not showing the names of the persons interested in the business, to file a certificate with the clerk of the county in which the principal place of business is located and subsequently to publish the certificate in a newspaper in that county once a week for four successive weeks. The certificate must show the names and residences of the persons transacting business in the fictitious name. A new certificate must be filed and published on each change of membership in the firm. If a person fails to file and publish the certificate required by the statute, neither he nor his assignees may "maintain" an action on any contract made or any transaction had in the fictitious name until the certificate has been filed and published. The "plea in abatement" thus afforded to the defendant

³ Lack of compliance merely abates the action; filing and publication pending trial is sufficient. *Radneck v. Southern Calif. Metal & Rubber Co.*, 184 Cal. 274, 193 Pac. 775 (1920); *Kadota Fig Assn. v. Case-Swayne Co.*, 73 Cal. App.2d 796, 167 P.2d 518 (1946). If the defense is upheld and the action abated, the judgment for the defendant is not res judicata in a subsequent action on the same cause of action. *Folden v. Lobrovich*, 153 Cal. App.2d 32, 314 P.2d 56 (1957). See also Civil Code Section 2468 as amended by Cal. Stats. 1967, Ch. 257, permitting filing and publication by a trustee in bankruptcy, guardian, conservator, executor, or administrator for the purpose of maintaining an action to recover any sums due the bankrupt, incompetent, or deceased person or partnership that should have filed and published the certificate but failed to do so.

⁴ The defense of noncompliance is waived if the defendant fails to raise it. *Bryant v. Wellbanks*, 88 Cal. App. 144, 263 Pac. 332 (1927). Moreover, the trial judge has discretion to refuse to permit amendment of the defendant's pleading to raise the defense. *Stewart v. San Fernando Ref. Co.*, 22 Cal. App.2d 661, 71 P.2d 1118 (1937).

in such an action is the only sanction or incentive for complying with the statute.⁵

The fictitious name statute does not inhibit adoption of business or trade names, nor does it prevent use of duplicate or deceptively similar trade names. Rather, the courts uniformly have said that the single purpose of the statute is to prevent fraud or deception in commerce by providing sources of information--the certificate on file in the county clerk's office and, to a limited and transient extent, the newspaper publication--from which persons can learn with whom they are dealing.⁶

After assessing the views of interested persons and organizations, the Commission has concluded that, admitting its obvious shortcomings, the fictitious name statute continues to serve a useful purpose.

Suggestions that the statute be repealed, on analysis, are based on the

⁵ Nothing precludes entering into contracts and transactions in the fictitious name; the sanction is limited to maintaining actions on such contracts or transactions. See note 3, *supra*. The sanction does not apply to tort actions. *Ralph v. Lockwood*, 61 Cal. 155 (1882). *Thompson v. Byers*, 116 Cal. App. 214, 2 P.2d 496 (1931).

Compliance with the statute is not a prerequisite to obtaining local business or other licenses in the fictitious name, nor in general is such compliance required to conduct in a fictitious name one of the businesses or professions licensed by the state. However, compliance is necessary to obtain a license as a real estate broker or salesman (Business and Professions Code Section 10159.5), mineral, oil, and gas broker or salesman (Business and Professions Code Section 10522.5), or check seller and cashier (Financial Code Section 12300.2). See also Business and Professions Code Section 7540 (private investigators, private patrol operators, insurance adjusters, and repossessioners must comply with the statute before conducting business under a fictitious name).

⁶ See *Andrews v. Glick*, 205 Cal. 699, 272 Pac. 587 (1928); *Hixon v. Boren*, 144 Cal. App.2d 547, 301 P.2d 615 (1956); *Bank of America v. National Funding Corp.*, 45 Cal. App.2d 320, 114 P.2d 49 (1941). See also *Witkin*, 3 Summary of California Law 2264 (1960) ("The purpose of the requirement is to make a public record of the individual members of the firm for the benefit of those who deal with them.")

ineffectiveness and awkwardness of the existing provisions rather than on any question as to the desirability of a ready source of information concerning the realities obscured by business or trade names. The Commission believes that a thorough revision and streamlining of the statute can restore its effectiveness and enable it again to serve the purpose for which it originally was enacted.

RECOMMENDATIONS

Persons subject to the statute

The existing statute does not apply to all persons doing business in California under a fictitious name. Civil Code Section 2467 exempts commercial and banking partnerships established and transacting business in a place without the United States. The courts also have construed the filing requirements of the act to exempt any person who does not maintain a place of business within this state.⁷

The exemption for "foreign" commercial and banking partnerships should be eliminated. The exemption was provided in 1872 and has remained in the code with only a minor modification in 1873. The reference to banking partnerships is now obsolete as only a corporation may carry on the business of banking in California.⁸ Foreign commercial partnerships should be required to comply with the statute. Persons in

⁷ See Moon v. Martin, 185 Cal. 361, 197 Pac. 77 (1921).

⁸ Fin. Code § 102.

California normally would have greater difficulty in obtaining information concerning foreign partnerships than in obtaining information concerning local business enterprises. Since both foreign and domestic enterprises would be treated equally, there would be no discrimination against foreign commerce. The exemption originally was based on a similar provision of New York law which has since been repealed.⁹

Coverage of the statute should be limited to those persons who regularly do business in California under a fictitious business name but should be extended to all such persons, even though they may have no established places of business within the state. The need for information concerning the identity of a person who does business in California but does not have an established place of business in California seems at least as great as the need for information concerning the identity of a person doing business from a fixed location within the state.

⁹ See Section 2467 in 2 Haymond & Burch, Cal. Civ. Code Annot. 109 (1872); compare 3 Rev. Stat. of N.Y. (Banks and Brothers 5 ed.) 918 with N.Y. Penal Code Section 440.

Fictitious business name statements

Every person covered by the statute should be required to file a fictitious business name statement within 40 days after he begins regularly to transact business in this state under a fictitious business name. The statement should include all the information required by existing law and, in addition, the address of the principal place of business of the person filing the statement. Although not presently required by the statute, the address of the principal place of business is customarily included in a fictitious name certificate.

Place of filing of statements

A person required to comply with the statute should continue to file his statement in the office of the county clerk of the county in which he has his principal place of business in this state or, in the absence of such a principal place of business, in the office of the county clerk of Sacramento County.

Publication requirement

Since 1872, each person filing a fictitious name certificate has been required to publish the certificate in a newspaper once a week for four successive weeks. A new publication is required each time the membership of a partnership changes. A typical minimum charge for the required publication is \$18 although in some cases the cost of publication has been more than \$200.

The publication requirement no doubt served a useful purpose when it was first imposed in 1872. In that era, there were fewer newspapers and the notices were published in the local papers that were read by the residents of the locality. Even today in many parts of the state, a

local community is served by a single newspaper, and publication can provide notice to the residents of that community. Nevertheless, there is an increasing concentration of both population and business in the large urban centers of the state. For example, more than half the fictitious name certificates published--approximately 20,000 certificates every year--are published in Los Angeles County. And many of those fictitious name certificates are published in legal newspapers rather than those read by the general public. In these urban centers the theory that newspaper publication effectuates the purposes of the statute by adding to the body of community knowledge concerning businesses and their ownership may be subject to question.

A survey made by the Commission in 1965 disclosed that 42 states had statutes regulating the use of fictitious business or trade names. Thirty-three states did not require publication in a newspaper. Of the nine remaining states, California, Florida, Montana, and Oklahoma required publication four times; Georgia, Minnesota, and Pennsylvania required publication twice; and Nebraska and North Dakota required one publication. At least two states, New York and South Dakota, once required publication but have eliminated this requirement. Investigation disclosed that the register maintained by the county clerk, rather than the newspaper publication, is the source most frequently used by persons who need information concerning businesses operating in a fictitious business name.

The Commission has concluded that newspaper publication of a fictitious business name statement can serve a useful purpose if the form in which the statement is published is improved and the publication of useless material avoided. However, the Commission believes that, in view of the inherent shortcomings of publication, it would be desirable to authorize

another notice-giving procedure.

Accordingly, the county clerk should be authorized to furnish to any person who so requests daily or less frequent summaries or compilations of filings under the statute. Thus, where this procedure is adopted, any interested person can secure from one source complete and current information concerning all filings within the county. A somewhat similar provision for the furnishing of compilations of financing statements is found in Section 9407 of the Commercial Code. The person making the request should, of course, be required to reimburse the county clerk for the cost of furnishing this information.

As for publication, the fictitious business name information should be published in a more useful form and useless material should not be published. The information to be published should include the fictitious business name, the address of the principal place of business, and the name of the individual or corporation or the general partners doing business under the fictitious name. Publication should accompany each new filing where the information required to be published is changed. The expiration of the statement upon a change in circumstances is discussed below.

The residence addresses of the individual or partners should not be included in the published information. The slight value this information might have does not justify the cost of publication. The addresses can easily be obtained by reference to the business name statement filed in the office of the county clerk. In this respect, the information published will be comparable to the information required to be included in a statement filed by a domestic corporation pursuant to Corporations Code Section 3301, which includes the names, but not the residence addresses, of the principal officers of the corporation.

The number of publications should be reduced from four to one. This will reduce the volume of material to be reviewed to one-fourth, and, in view of the improved form of publication recommended above, should still provide more than adequate notice.

Expiration of statement

To ensure that the information on file with the county clerk is kept current and to provide a means whereby the county clerk can dispose of obsolete statements in his files:

(1) The fictitious business name statement should be renewed at least once every five years. This retains the substance of existing law.

(2) The statement should expire and a refiling be required whenever any change occurs that renders the facts set forth in the statement inaccurate. The only exception to the latter rule should be that a mere change in the residence address of an individual or general partner should not cause the statement to expire. Under existing law, a new certificate must be filed only when there is a change in the members of a partnership.

Maintenance of fictitious business name records

The statute should continue to require that the county clerk maintain indices of fictitious business name statements that will permit determination of whether: (1) any business using a fictitious business name has on file a fictitious business name statement; (2) any individual, general partner, or corporation is listed in any fictitious business name statement; (3) a statement of abandonment of the use of a fictitious business name is on file.¹⁰

¹⁰ Civil Code Section 2470 presently requires each county clerk to keep a "register" of certain of the information contained in the fictitious name certificates. This requirement would be superseded by the requirements recommended in the text.

The statute should set forth only the function of these indices. This will permit each county clerk to use the system best suited to the resources and needs of his county. Generally, in the smaller counties relatively simple alphabetical indices will satisfy the requirement; however, the statute should also permit the use of automatic data processing equipment where available.

In 1966, Civil Code Section 2469.2 was enacted to permit the removal of obsolete fictitious name certificates from the files after a stated period of time. A similar procedure should be adopted permitting the destruction of (1) fictitious business name statements, (2) statements of abandonment of use of a fictitious business name, and (3) the entries in the indices relating to these statements.

Obtaining compliance with statutory requirements

Under existing law, the only sanction for failing to file a fictitious name certificate is that no action may be "maintained" on a contract made or a transaction had in a fictitious name until the certificate has been filed and published. As previously indicated, this provision permits an action to be commenced even though no fictitious name certificate has been filed and published; but, if the defendant objects to the plaintiff's failure to comply with the fictitious name statute, the action will be abated until the certificate has been filed and published. If the defendant fails to object either by answer or by demurrer, the objection is waived.

The existing sanction does not assure that information as to the identity of a person using a fictitious business name will be available in the principal type of case where it is most needed, i.e., where a person has a claim against a business operating under a fictitious business

name and needs to know the identity of the person or persons conducting the business.

The ineffective and oblique sanction now imposed should be eliminated. Instead, a person who willfully and knowingly fails to comply with any requirement of this chapter, should be subject to a civil penalty not to exceed \$300, which penalty should be recoverable in a civil action brought by the county counsel, or if there is none the district attorney, of any county in which a person has transacted or is transacting business in violation of the statute. Although the requirement of an acknowledgement should be eliminated, filing of a false statement should be made a misdemeanor, subjecting the registrant to a fine not to exceed \$1,000. Failure to comply with the statute should not make void or unenforceable any transaction entered into by a person while he was not in compliance with the statute.

Operative date

The operative date of the proposed statute should be July 1, 1971. The date should be deferred: (1) to allow those persons who must comply with the statute a reasonable time in which to familiarize themselves with its new requirements; and (2) to give the county clerk sufficient time in which to establish the necessary procedures. All persons, including those who are in compliance with Civil Code Sections 2466-2471, would become subject to the act on its operative date--July 1, 1971.¹¹ However,

¹¹ Civil Code Section 2469.2 provides that all fictitious name certificates that were filed prior to the enactment of that section in 1966 expire on January 1, 1971, and a renewal certificate must be filed on or before December 31, 1970, to continue compliance with the statute. Senate Bill No. 102 (1969 Regular Session) would defer expiration to January 1, 1972, and renewal to December 31, 1971. This requirement will be superseded by the requirement that a fictitious business name statement be filed not later than July 1, 1971. Thus, although it is recommended that a new filing be required by all persons doing business under a fictitious name, many, if not most, of such persons would otherwise be required to make a new filing under Civil Code Section 2469.2.

a person should be permitted to file a statement in compliance with the new act at any time after January 1, 1971, and the statement so filed should be deemed to have been filed on July 1, 1971.

Relocation of statute

The provisions dealing with fictitious business names should be moved to Part 3 of Division 7 of the Business and Professions Code which imposes "General Business Regulations" relating to "Representations to the Public." Fictitious business name legislation is a type of business regulation. The present location in the Civil Code in the title on "Partnerships" is inappropriate as the statute deals with corporations and individuals as well as with partnerships. Furthermore, the other sections dealing with partnerships and limited partnerships have been moved to other codes.

Miscellaneous revisions

In addition to the major changes discussed above, the Commission recommends other technical and relatively minor changes in existing legislation in the interest of clarity and precision. These changes are indicated in the Comments to the proposed statutory provisions that follow:

The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to repeal Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code, to add Chapter 5 (commencing with Section 17900) to Part 3 of Division 7 of, and to amend Sections 7540, 10159.5, and 10522.5 of, the Business and Professions Code, to amend Section 12300.2 of the Financial Code, to repeal Section 26848 of the Government Code, and to amend Section 6066 of the Revenue and Taxation Code, relating to fictitious business names.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code is repealed.

Comment. Chapter 2, consisting of Sections 2466-2471, is superseded by Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code.

Note. The sections repealed read as follows:

2466. Except as otherwise provided in the next section every person transacting business in this State under a fictitious name and every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which his or its principal place of business is situated, a certificate subscribed and acknowledged in the manner provided in Section 2468 of the Civil Code, stating that name in full and the place of residence of such person and stating the names in full of all the members of such partnership and their places of residence.

Such subscribed and acknowledged certificate must be published subsequent to the filing thereof with the county clerk pursuant to Government Code Section 6064, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county. An affidavit showing

the publication of such certificate as in this section provided shall be filed with the county clerk within 30 days after the completion of such publication, but in no event shall such publication be made prior to the filing of such certificate with the county clerk.

2467. A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this state the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

2468. The certificate filed with the clerk as provided in Section 2466 must be signed by the person therein referred to, or by the partners, as the case may be, and acknowledged before some officer, authorized to take the acknowledgment of conveyances of real property, by personally appearing before such officer, notwithstanding the provisions of Section 1195 of the Civil Code. Such certificates may be executed on behalf of any such person or partner by an agent, or at any time after the bankruptcy, incompetency, or death of such a person or partner, by the trustee in bankruptcy or the guardian, conservator, executor or administrator of such person or partner for the purpose of maintaining an action to recover any sums due the bankrupt, incompetent, or deceased person or facilitating the maintenance of an action by the partnership, of which the bankrupt, incompetent, or deceased partner was a member, to recover sums due such partnership. Where a business is hereafter commenced by a person under a fictitious name or a partnership is hereafter formed, the certificate must be filed and the publication designated in that section must be made within one month after the commencement of such business, or after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership. Where the business has been heretofore conducted under a fictitious name or where the partnership has been heretofore formed; the certificate must be filed and the publication made within six months after the passage of this act. No person doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as partners contrary to the provisions of this article, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had, under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required.

2469. On every change in the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the county clerk, and a new publication made as required by this Article on the formation of such partnership.

2469.1. Every person and every partnership transacting business in this State under a fictitious name, or designation not showing the names of the persons interested as partners in such business, who has filed a certificate and caused the publication and filing of the affidavit of publication thereof according to the provisions of this chapter, may, upon ceasing to use that name, file a certificate of abandonment of name, stating the name in full and the place of residence of such person, and stating the names in full of all the members of such partnership and their places of residence. Such certificate shall be signed by the person therein referred to, or by one or more of the partners, as the case may be.

Such certificate must be published pursuant to Government Code Section 6064, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county. An affidavit showing the publication of such certificate shall be filed subsequent to the certificate with the county clerk within 30 days after the completion of such publication.

2469.2. Every certificate of fictitious name filed under the authority of this chapter shall expire and be of no further force and effect at the end of five years following the first day of January next after the filing of a certificate of fictitious name with the county clerk in accordance with Section 2466, unless at any time within 12 months immediately preceding said date of expiration a renewal certificate containing all information required in the original certificate and subscribed and acknowledged as required by that section is filed with the county clerk with whom said original is on file. No such renewal certificate need be published unless there has been a change in the information required in the original certificate, in which event publication shall be made as provided for the original certificate.

Every certificate of fictitious name heretofore filed with the county clerk pursuant to Section 2466 shall expire and be of no further force and effect on and after January 1, 1971, unless at any time on or after January 1, 1970, but not later than December 31, 1970, a renewal certificate in accordance with this section is filed with said county clerk.

2469.3. Upon the filing of a certificate of abandonment pursuant to Section 2469.1 or upon the expiration of a certificate of fictitious name pursuant to Section 2469.2 and following the making of the entry required by Section 2470 the county clerk may destroy the certificate of fictitious name the use of which was so abandoned or which has expired, provided that microfilm copies are taken of the certificates and subsequently filed before they are destroyed.

2470. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this article, entering in alphabetical order the name of every such person who does business under a fictitious name, and the fictitious name, and the name of every such partnership, and of each partner therein.

Upon the abandonment of the use of a fictitious name, or upon the expiration of the certificate of fictitious name, the clerk shall enter the fact of abandonment or expiration in the register.

2471. Copies of the entries of a County Clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

Sec. 2. Chapter 5 (commencing with Section 17900) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

CHAPTER 5. FICTITIOUS BUSINESS NAMES

17900. Fictitious business name defined

17900. (a) As used in this chapter, "fictitious business name" means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners.

(2) In the case of a partnership or other association of persons, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners.

(3) In the case of a corporation, any name other than the corporate name stated in its articles of incorporation.

(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

Comment. Subdivision (a) of Section 17900 codifies the definition of "fictitious name" developed by the courts in interpreting former Civil Code Section 2466. See Vagin v. Brown, 63 Cal. App.2d 504, 146 P.2d 923 (1944)(individual); Andrews v. Glick, 205 Cal. 699, 272 Pac. 587

(1928)(partnership); Kadota Fig Ass'n of Producers v. Case-Swayne Co., 73 Cal. App.2d 796, 167 P.2d 518 (1946)(unincorporated cooperative association); Berg Metals Corp. v. Wilson, 170 Cal. App.2d 559, 339 P.2d 869 (1959)(corporation).

The subdivision refers to "general partners" as defined in Section 17901 in order to omit limited partners of partnerships formed under the Uniform Limited Partnership Act (Corporations Code Sections 15501-15531). As a general rule, a limited partner's name may not appear in the firm name without subjecting the limited partner to liability as a general partner. Corp. Code § 15505. See also the Comment to Section 17911.

Subdivision (b) removes an inconsistency in the prior law in defining "a name that suggests the existence of additional owners." Under prior interpretations, the use of such terms as "& Co.," "& Sons," and "Bros." subjected a business to the requirements of the statute. See Swartz & Gottlieb, Inc. v. Marcuse, 175 Cal. 401, 165 Pac. 1015 (1917); North v. Moore, 135 Cal. 621, 67 Pac. 1037 (1902); Byers v. Bourret, 64 Cal. 73, 28 Pac. 61 (1883). But a distinction was formerly drawn between "Jones Company" and "Jones & Company," and the former was not required to comply with the statute. Contrast Wetenhall v. Chas. J. Mabrey Constr. Co., 209 Cal. 293, 286 Pac. 1015 (1930) with Byers v. Bourret, *supra*. As a practical matter, few businessmen were aware of the distinction and both terms suggest the existence of additional owners. This distinction is therefore eliminated and both names now require a filing under this chapter. An individual proprietor can still conduct business under a name such as "Kohler Steam Laundry," however, without being required to register under this chapter. See Kohler v. Stephenson, 39 Cal. App. 374, 178 Pac. 970 (1919).

17901. General partner defined

17901. As used in this chapter, "general partner" means:

(a) In the case of a partnership, a general partner.

(b) In the case of an unincorporated association other than a partnership, a person interested in such business whose liability with respect to the business is substantially the same as that of a general partner.

Comment. The term "general partner" is used in Section 17900 and other sections of this chapter. "Unincorporated association" means any unincorporated organization of two or more persons, and subdivision (b) encompasses therefore--among others--joint ventures, marketing cooperatives, syndicates, and Massachusetts trusts. The qualification of Section 17910 that the unincorporated association be transacting business for a profit excludes governmental entities and such nonprofit associations as labor unions, fraternal and charitable organizations, and the like.

17902. Person defined

17902. As used in this chapter, "person" includes individuals, partnerships and other associations, and corporations.

17903. Registrant defined

17903. As used in this chapter, "registrant" means a person who is filing or has filed a fictitious business name statement.

17910. Person transacting business in fictitious business name to file statement

17910. Every person who regularly transacts business in this state for profit under a fictitious business name shall:

(a) File a fictitious business name statement in accordance with this chapter not later than 40 days from the time he commences to transact such business; and

(b) File a new statement in accordance with this chapter on or before the date of expiration of the statement on file.

Comment. Section 17910 requires every individual, partnership, or other association of persons, and corporation that regularly transacts business for profit in this state under a fictitious name to file a fictitious business name statement. The language of the section--"person who regularly transacts business in this state for profit"--excludes from the coverage of the statute any person who only occasionally transacts business in California and any nonprofit organization.

Two exemptions from the filing requirement that were recognized under prior law are not continued under this chapter. See Civil Code Section 2467 (superseded by this chapter)(commercial or banking partnership established and transacting business in a foreign country) and Moon v. Martin, 185 Cal. 361, 197 Pac. 77 (1921)(person not maintaining a place of business in this state).

The 40-day period provided for filing the initial fictitious business name statement parallels the 40-day period provided in Corporations Code Section 15700 for designating an agent to receive process on behalf of a foreign partnership.

See Section 17916 and the Comment to that section for a description of the circumstances under which a fictitious business name statement expires. Filing a new statement also extends the effective period of registration from the date of the new filing. See Section 17916.

17911. Contents of statement

17911. The fictitious business name statement shall include the following information:

(a) The fictitious business name under which the registrant transacts or intends to transact business.

(b) Whether the registrant is (1) an individual, (2) a domestic partnership or other domestic unincorporated association, (3) a foreign partnership or other foreign unincorporated association, (4) a domestic corporation, or (5) a foreign corporation.

(c) If the registrant has a place of business in this state, the street address of his principal place of business in this state. If the registrant has no place of business in this state, the street address of his principal place of business outside of this state.

(d) If the registrant is an individual, his full name and residence address.

(e) If the registrant is a partnership or other association of persons, the full name and residence address of each general partner and, if a limited partnership, that the registrant is a limited partnership.

(f) If the registrant is a corporation, the name of the corporation as set out in its articles of incorporation and the state of incorporation.

(g) The name of the person to whom, and the address to which, the county clerk is to mail the notice required by Section 17917.

Comment. Subdivisions (a), (d), and (e) of Section 17911 restate the substance of prior law under former Civil Code Sections 2466-2470.

Although the information required by subdivisions (c) and (f) was not explicitly required by the Civil Code sections superseded by this chapter, the requirements of these subdivisions conform to the generally prevailing practice under the prior law. Subdivision (e) omits limited partners. The names and addresses of all limited partners are required to be stated in the certificate of limited partnership recorded with the recorder of any county in which the limited partnership has a place of business. See Corp. Code § 15502. Since the registrant is required to show that it is a limited partnership, the remaining information can easily be secured from the recorder.

Subdivision (b) imposes a requirement not found in the prior law. The inclusion of information revealing the "type of person" registering will enable interested persons to secure further information from either the Secretary of State or other sources concerning the registrant.

The information required by subdivision (g) is necessary to enable the county clerk to mail a notice of the impending expiration of the statement. See Section 17917.

17912. Execution of statement

17912. If the registrant is an individual, the statement shall be signed by the individual; if a partnership or other association of persons, by a general partner; if a corporation, by an officer.

Comment. Section 17912 eliminates the requirement of former Civil Code Section 2468 that the fictitious business name statement be acknowledged. However, a penalty for making a false statement is provided in subdivision (b) of Section 17924. Moreover, the statement must be signed by the individual or in the case of a partnership or other association, by one of the general partners, and execution by an agent is not permitted. The section also specifies who may execute the statement on behalf of a corporation, a point not covered by prior law.

17913. Filing with county clerk

17913. The fictitious business name statement shall be filed with the clerk of the county in which the registrant has his principal place of business in this state or, if he has no place of business in this state, with the clerk of Sacramento County.

Comment. Section 17913 continues the requirement of Civil Code Section 2466 that the fictitious business name information be filed with the county clerk of the county in which the person's principal place of business is located, and further provides for filing in Sacramento County if the registrant has no place of business in California.

17914. What constitutes filing

17914. Presentation for filing of a fictitious business name statement and one copy, tender of the filing fee, and acceptance of the statement by the county clerk constitute filing under this chapter. The county clerk shall note on the copy the file number and the date of filing the original and shall certify and deliver or send the copy to the registrant.

Comment. Section 17914 is based on subdivision (c) of Corporations Code Section 24003 which relates to the filing of statements by unincorporated associations designating a principal office in this state or an agent for service of process or both.

17915. Publication of fictitious business name statements

17915. (a) Within 30 days after a fictitious business name statement has been filed pursuant to this chapter, the registrant shall cause to be published as provided in this section a notice containing the following information:

(1) The fictitious business name of the registrant.

(2) If the registrant has a place of business in this state, the street address of the registrant's principal place of business in this state. If the registrant has no place of business in this state, the street address of his principal place of business outside of this state.

(3) In the case of an individual registrant, the full name of the individual as shown in the statement.

(4) In the case of a partnership registrant, the full name of each general partner as shown in the statement.

(5) In the case of a corporate registrant, the name of the corporation as set out in its articles of incorporation as shown in the statement.

(b) The notice required by this section shall be published pursuant to Government Code Section 6061 in a newspaper of general circulation in the county in which the principal place of business of the registrant is located or, if there is no such newspaper in that county, then in a newspaper of general circulation in an adjoining county. If the registrant does not have a place of business in this state, the notice shall be published in a newspaper of general circulation in Sacramento County.

§ 17915

(c) No publication is required if the information required by subdivision (a) has been published previously and there are no changes in the information.

Comment. Section 17915 is substantively similar to the provisions of former Civil Code Sections 2466-2471 that required a publication of the fictitious business name statement to be made by the person filing the statement. As under the former law, publication is required to be made in the county where the principal place of business of the registrant is located. However, since the statute requires a fictitious business name statement to be filed by some persons who will not have a place of business in this state, Section 17915 requires publication by those persons in Sacramento County.

The form of notice has been improved both by the elimination of such useless information as the acknowledgment of the signature of the registrant and by the inclusion of all the basic information contained in the indices of the county clerk. The latter enables any interested person to obtain complete information concerning a particular statement from the county clerk of the county in which the principal place of business is located.

17916. Expiration of statement

17916. (a) Unless the statement expires earlier under subdivision (b) or (c), a fictitious business name statement expires at the end of five years from December 31 of the year in which it was filed in the office of the county clerk.

(b) A fictitious business name statement expires 40 days after any change in the facts set forth in the statement pursuant to Section 17911, except that a change in the residence address of an individual or general partner does not cause the statement to expire.

(c) A fictitious business name statement expires when the registrant files a statement of abandonment of the fictitious business name described in the statement.

Comment. Section 17916 is designed to ensure that the information on file with the county clerk (see Section 17919) is kept current and to provide a means whereby the county clerk can dispose of obsolete certificates in his files (see Section 17921).

Subdivision (a). The period provided by this subdivision parallels the period provided in subdivision (d) of Corporations Code Section 24003 for a statement filed by an unincorporated association designating its principal office or agent for process or both. Subdivision (a) substantially restates prior law under former Civil Code Section 2469.2.

Subdivision (b). Under former law, a new certificate was required to be filed only when there was a change in the membership of the partnership transacting business. However, in order that the fictitious business

names index will contain current information concerning the registrant, subdivision (b) requires that a new statement be filed, with one exception, whenever a change occurs in the facts required to be set forth by Section 17911 that renders the statement on file inaccurate. For example, when either the registrant changes his principal place of business in this state or, in a case where he had none previously, the registrant acquires a place of business in this state a new statement must be filed. In this regard, subdivision (b) is comparable to Corporations Code Sections 3301 (domestic corporations) and 6409 (foreign corporations)(new statement required to be filed by domestic or foreign corporation upon change in location or address of its principal office).

The requirement of former Civil Code Section 2469 that a new statement be filed upon a change in the membership of a partnership is continued by subdivision (b), but as limited partners need not be named in the statement (see Section 17911(e)), the subdivision requires a new filing only upon a change in general partners.

Subdivision (b) also requires a corporation to file a new statement if it continues to transact business regularly under a fictitious business name after a change in its corporate name. Whether former law required a new certificate in this case was uncertain.

Change in residence address of individual or partner. Although Section 17911 requires that a fictitious business name statement include the residence address of the individual registrant or of each partner of a partnership registrant, Section 17916 does not require that a new statement be filed each time there is a change in the residence address of the individual or a partner. Of course, when a new statement is filed because the previous statement has expired under Section 17916, it must contain the address of the individual or each partner as of the date of the new statement.

Subdivision (c). Under this subdivision, a registrant is no longer in compliance with Section 17910 if he continues to do business under his fictitious business name after filing a statement of abandonment under Section 17918.

17917. Notice of impending expiration

17917. Not later than the first day of December immediately preceding the expiration date of a fictitious business name statement as determined under subdivision (a) of Section 17916, the county clerk shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the person designated in the statement to receive such notices. Neither the failure of the county clerk to mail the notice as provided in this section nor the failure of the notice to reach the person to whom it is sent continues the fictitious business name statement in effect after its expiration. Neither the county nor any officer or employee of the county is liable for damages for failure to mail the notice required by this section.

Comment. Section 17917 is based substantially on Corporations Code Section 24006. The section is included to minimize the danger that the registrant will be unaware of the impending expiration of the statement.

17918. Abandonment of use of fictitious business name

17918. (a) A person who has filed a fictitious business name statement may, upon ceasing to transact business in this state under that fictitious business name, file a statement of abandonment of use of fictitious business name. The statement shall be signed in the same manner as a fictitious business name statement and shall be filed with the clerk of each county in which the person has filed his fictitious business name statement.

(b) The statement shall include:

(1) The name being abandoned.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed and the file number assigned to such statement.

(3) In the case of an individual who is abandoning the use of a fictitious business name, the full name of the individual.

(4) In the case of a partnership or other association of persons that is abandoning the use of a fictitious business name, the full names of all the general partners as set forth in the fictitious business name statement.

(5) In the case of a corporation that is abandoning the use of a fictitious business name, the name of the corporation as set forth in its articles of incorporation.

Comment. Section 17918 supersedes Civil Code Section 2469.1.

The information needed to comply with paragraph (2) of subdivision (b) can be secured from the county clerk and is marked on the statement at the time the fictitious business name statement is originally filed.

See Section 17914.

17919. Index of fictitious business name information

17919. (a) The county clerk shall maintain one or more indices which permit the determination of at least the following information:

(1) Whether any business using a specific fictitious business name has on file a fictitious business name statement setting forth such name and, if so, the file number of the statement.

(2) Whether any individual, general partner, or corporation is listed in any fictitious business name statement on file and, if so, the file number of the statement.

(3) Whether a statement of abandonment of use of a specific business name is on file and, if so, the file number of the statement of abandonment.

(b) Four years after a fictitious business name statement has expired, the county clerk may delete the information concerning that statement from the index. Four years after a statement of abandonment of use of fictitious business name has been filed, the county clerk may delete from the index all reference to the use of that name by the person filing the statement.

Comment. Section 17919 requires the county clerk to maintain and keep current indices of fictitious business name statements. This section supersedes former Civil Code Section 2470. The indices required are merely those that facilitate supplying the information required by Section 17920. Generally, in the counties not using automatic processing

equipment, one index will contain in alphabetical order each fictitious business name in use in the county together with the file number of the statement relating to that name so that the other information contained in the statement can be ascertained. A second index will contain in alphabetical order the name of each person doing business under a fictitious name in the county together with the file number or numbers of each statement on file in which that person is listed. Once the file number of the statement is known, a copy of the statement can be easily secured. Section 17919 is drafted, however, to permit the use of any system that will enable a satisfactory records search. In some counties, this will be aided significantly by use of automatic data processing equipment.

Paragraph (3) of subdivision (a) retains the substance of former Civil Code Section 2470 insofar as it requires the fact of abandonment of use of a fictitious business name and the date of filing a statement of such abandonment to be entered in the indices.

Subdivision (b) authorizes the county clerk to purge the fictitious business name index of obsolete entries after four years. The four-year period parallels that provided by Section 17921.

17920. Certified copies of statements

17920. (a) For a fee of two dollars (\$2), the county clerk shall provide any person who so requests a certified copy of any fictitious business name statement or statement of abandonment of use of a fictitious business name on file in his office.

(b) A copy of a statement, when certified as provided in subdivision (a), establishes a rebuttable presumption of all of the following:

(1) The existence of the original statement.

(2) The execution of the statement by the person by whom it purports to have been executed.

(3) The truth of the information required by Sections 17911 or 17918 that is contained in the statement.

(c) The presumptions established by subdivision (b) are presumptions affecting the burden of producing evidence.

Comment. Section 17920 provides for the furnishing of certified copies of statements on file and gives a presumptive effect to the certified copy. The presumption is classified as one affecting the burden of producing evidence. Evidence Code Section 604 provides:

604. The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate.

17921. Retention and destruction of statements

17921. (a) The county clerk shall mark each fictitious business name statement with a consecutive file number and the date of filing and shall retain the original statement for his file. He may destroy or otherwise dispose of such statement four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name with a consecutive file number and the date of filing. He may destroy or otherwise dispose of any such statement four years after the statement is filed.

(c) In lieu of retaining the original statement on file, the county clerk may retain a copy of the statement in accordance with Government Code Section 69844.5.

Comment. Section 17921 requires the county clerk to retain current fictitious business name statements and statements of abandonment. The section to this extent continues the substance of former Civil Code Sections 2469.2 and 2469.3. The statements are to be filed consecutively according to file numbers to be assigned to them when they are presented for filing. The statements may then be located by the use of indices prepared by the county clerk. See Section 17919.

Subdivision (a) further authorizes the county clerk to destroy fictitious business name statements four years after they expire. To this extent, it is based on subdivision (a) of Corporations Code Section 24004. However, under the prior law, a statement could be destroyed

only if microfilm copies were made and filed; this requirement is not continued.

Subdivision (b) makes similar provision for statements of abandonment and authorizes destruction of such statements four years after they are filed. No equivalent provision existed under prior law. Taken together, subdivisions (a) and (b) provide a procedure for purging the files of obsolete statements. Subdivision (c) also authorizes the county clerk to retain microfilm or other photographically reproduced copies of the current fictitious business name statements and statements of abandonment.

The county clerk is required to file any statement that meets the requirements of this chapter and is accompanied by the required filing fee. He is not authorized to reject a statement on the ground that the particular fictitious business name is already in use or that the statement was not presented for filing within the time specified in Section 17910. In this respect, Section 17921 continues prior law.

17922. Summaries or compilations of filings

17922. (a) Upon prepayment of the fee established pursuant to subdivision (b), the county clerk may furnish to any person who so requests daily or less frequent summaries or compilations of filings under this chapter.

(b) The fee for furnishing information under this section shall be fixed by the county clerk with the approval of the county board of supervisors and shall be sufficient to pay at least the actual cost of furnishing such information.

Comment. Section 17922 authorizes--but does not require--the county clerk to furnish daily or less frequent summaries or compilations of filings. A comparable provision is included in Section 9407 of the Commercial Code. Nothing in this section, of course, affects the right of any person to personally inspect the public records.

17923. Fees for filing statements

17923. (a) The fee for filing a fictitious business name statement is five dollars (\$5). This fee covers the cost of filing and indexing the statement and any affidavit of publication, furnishing one certified copy of the statement to the person filing the statement, and mailing the notice of expiration of the statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is two dollars (\$2). This fee covers the cost of filing and indexing the statement.

Comment. Section 17923 supersedes Government Code Section 26848 (repealed by this chapter). The fees are intended to compensate the county clerks for their duties under this chapter.

17924. Penalties for violation of chapter

17924. (a) Any person who knowingly and willfully fails to comply with the requirements of this chapter is liable civilly in a sum to be determined by the court not to exceed three hundred dollars (\$300).

(b) Any person who files any statement under this chapter, knowing that such statement is false, in whole or in part, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1000).

(c) The sum referred to in subdivision (a) may be recovered in an action brought in any court of competent jurisdiction by the county counsel, or if there be none, then by the district attorney, of any county in which the person has transacted or is transacting business under a fictitious business name. Any sums collected by the county counsel or district attorney shall be deposited in the general fund of the county where the action is brought.

(d) No contract or transaction is impaired because a party to the contract or transaction has failed to comply with this chapter.

(e) Nothing in this chapter prevents a person from filing a fictitious business name statement at any time after the time prescribed in this chapter.

Comment. Section 17924 provides the only sanctions for failure to comply with the requirements of this chapter.

Subdivision (d) makes clear that failure to comply with the chapter has no effect on the validity or enforceability of a contract or other transaction.

Subdivision (e) permits a person to comply with the provisions of this chapter at any time after the times prescribed in Section 17910. However, late compliance is not made a defense in an action to recover the civil penalty for willful failure to comply with the chapter within the periods prescribed.

§ 7540

Sec. 3. Section 7540 of the Business and Professions Code is amended to read:

7540. No licensee shall conduct a business under a fictitious business name unless and until he has obtained the written authorization of the bureau to do so.

The bureau shall not authorize the use of a fictitious business name which is so similar to that of a public officer or agency or of that used by another licensee that the public may be confused or misled thereby.

The authorization shall require, as a condition precedent to the use of such name, ~~the filing of a certificate of doing business under a fictitious name with the county clerk of the county where the licensee's principal place of business is located, in the manner provided in Chapter 2 of Title 10 of Part 4 of Division 3 of the Civil Code~~ that the licensee comply with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

A licensee desiring to conduct his business under more than one fictitious business name shall obtain the authorization of the bureau in the manner prescribed in this section for the use of each such name.

The licensee shall pay a fee of ten dollars (\$10) for each authorization to use an additional fictitious business name and for each change in the use of a fictitious business name. If the original license is issued in a nonfictitious name and authorization is requested to have the license reissued in a fictitious business name the licensee shall pay a fee of ten dollars (\$10) for such authorization.

§ 7540

Comment. Section 7540, which relates to private investigators, private patrol operators, insurance adjusters, and reposseors, is amended to conform to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 4. Section 10159.5 of the Business and Professions Code is amended to read:

10159.5. Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of ~~both the entry of the county clerk and the affidavit of publication made pursuant to the provisions of Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code~~ his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

Comment. Section 10159.5, which relates to real estate salesmen and brokers, is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 5. Section 10522.5 of the Business and Professions Code is amended to read:

10522.5. Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy ~~of both the entry of the county clerk and the affidavit of publication made pursuant to the provisions of Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code~~ his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of this code .

Comment. Section 10522.5 which relates to mineral, oil, and gas brokers and salesmen, is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

§ 12300.2

Sec. 6. Section 12300.2 of the Financial Code is amended to read:

12300.2. Every person engaging in the business of a check seller or cashier shall conduct such business under his true name unless he has complied with ~~the provisions of Chapter 2, Title 10, Part 4, Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code .

Comment. Section 12300.2 is amended to conform the section to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code which supersedes Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code. No substantive change is made in this section.

Sec. 7. Section 26848 of the Government Code is repealed.

~~26848.--The-fee-for-filing-and-indexing-a-certificate-of
fictitious-name,-including-affidavit-of-publication,-and-the
fee-for-filing-and-indexing-a-renewal-certificate-of-fictitious
name,-is-two-dollars-(\$2)-.~~

Comment. Section 26848 of the Government Code is superseded by
Business and Professions Code Section 17923.

Sec. 8. (a) This act becomes operative on July 1, 1971, except that at any time after January 1, 1971, an individual, partnership, or corporation may file a fictitious business name statement as provided in Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code, and the certificate so filed shall be deemed to have been filed on July 1, 1971.

(b) The county clerks shall retain all certificates of fictitious name and certificates of abandonment of fictitious names and the registers relating thereto, as provided in Civil Code Sections 2466 to 2471, inclusive, until July 1, 1975. After July 1, 1975, the county clerks may destroy or otherwise dispose of such certificates and registers. No certificate shall be accepted for filing by the county clerks under Civil Code Sections 2466 to 2471, inclusive, after June 30, 1971.

Comment. The new fictitious business name requirements (Business and Professions Code Sections 17900-17924) are made effective on July 1, 1971, but statements are permitted to be filed at any time after January 1, 1971, so that the persons covered by the new requirements will be in compliance on July 1, 1971.

A person who has complied with Civil Code Sections 2466-2471 (the former so-called fictitious name statute) is required to make a new filing under Business and Professions Code Sections 17900-17924 not later than July 1, 1971, if he is regularly transacting business in California. See Business and Professions Code Section 17910.

Subdivision (b) provides for retention of the fictitious name certificates and the registers relating thereto for a limited period following the enactment of the new statute so that the information will be available to persons who have claims arising before July 1, 1971, against firms operating under a fictitious business name.

Eliminate Section 17911 (present) and substitute the following:

Section 17911. Contents of statement; forms

17911. (a) The fictitious business name statement shall contain the following information and be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following _____ (here insert whichever of the following is applicable: (1) "individual," (2) "domestic partnership," (3) "limited partnership," (4) "domestic unincorporated association other than a partnership," (5) "foreign partnership," (6) "foreign unincorporated association other than a partnership," (7) "domestic corporation," (8) "foreign corporation") is doing business as _____ (here insert business name) at _____ (If registrant has a place of business in this state, here insert the street address of his principal place of business in this state. If the registrant has no place of business in this state, here insert the street address of his principal place of business outside this state.):

(If the registrant is an individual, here insert his full name and residence address. If the registrant is a partnership or other association of persons, here insert the full name and residence address of each general partner. If the registrant is a corporation, here insert the name of the corporation as set out in its articles of incorporation and the state of incorporation.)

Signed _____

Statement Filed with the County Clerk of _____ (name) County
on _____ (date).

(b) The form on which the fictitious business name statement is contained shall also contain a space where the registrant may indicate the name of the person to whom, and the address to which, the county clerk is to mail the notice required by Section 17917.

(c) The county clerk shall furnish without charge forms satisfying the requirements of this section.