

# FLORIDA CORPORATE PRACTICE

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\*Biographical information for Mr. Blair appears on page 1-1 of this manual.

\*\*J.D., 2011, cum laude, Stetson University College of Law. Ms. Kohn is a member of the Florida Bar. She is an associate in the corporate and healthcare departments at the Tampa office of Shumaker, Loop & Kendrick, LLP.

## I. [§3.1] INTRODUCTION

A corporation's name as stated in the articles of incorporation is the true legal name of the corporate entity. See *F.S.* 607.0202(1)(a). The registration of corporate names is an important function of the Florida Department of State (the department). Because of the department's central filing system and registration requirements, the public has access to information about a corporation such as its principal business location, the names and addresses of its officers and directors, and the name and location of the corporation's registered agent for service of process, regardless of the name under which the corporation transacts business. See Chapter 15 of this manual for further discussion of the functions of the department.

The corporate name may differ from names under which a corporation actually engages in business, such as a trade name or fictitious name. If a corporation is transacting business under another name, the Fictitious Name Act requires that the name be registered, before its use, with the Division of Corporations of the department. *F.S.* 865.09(3). A corporation may also be known in the community under a particular trade name. This is a name that may be used to identify a business, but for which registration is not required. See *F.S.* 495.011(12); *Marks v. Cayo Hueso, Ltd.*, 437 So.2d 775 (Fla. 3d DCA 1983) (to establish previous use of trade name under *F.S.* 495.151, entity was not required to have registered trade name), citing *Safeway Stores, Inc. v. Safeway Discount Drugs, Inc.*, 675 F.2d 1160 (11th Cir. 1982). It should be noted, however, that in litigation over the use of a trade name or trademark, previous registration may be used as prima facie evidence of previous use and exclusive ownership. *Abner's Beef House Corp. v. Abner's International, Inc.*, 227 So.2d 865 (Fla. 1969); but see *Continental Cigar Corp. v. Edelman & Co., Inc.*, 397 So.2d 957 (Fla. 3d DCA 1981) (finding that ownership of trademark and logo acquired from an insolvent corporation was not established by the fact that the acquiring party registered them with the Secretary of State). A more detailed discussion on trademarks and Florida's Registration and Protection of Trademarks Act is beyond the scope of this manual.

## II. SELECTION OF CORPORATE NAME

### A. [§3.2] Requirements

A corporation's name "[m]ust contain the word 'corporation,' 'company,' or 'incorporated' or the abbreviation 'Corp.,' 'Inc.,' or 'Co.,' or the designation 'Corp.,' 'Inc.,' or 'Co.,' as will clearly indicate that it is a corporation instead of a

natural person, partnership, or other business entity.” *F.S.* 607.0401(1). Words usually associated with noncorporate entities should be avoided.

Use of the word “Limited” and the corresponding abbreviation “Ltd.” must be avoided in Florida corporate names because those designations are required to be used in other business entity situations. Limited partnership laws require that the name of a limited partnership contain the word “Limited,” the phrase “limited partnership,” the abbreviation “Ltd.” or “L.P.,” or the designation “LP.” *F.S.* 620.1108(2). Limited liability company laws require that the name contain the words “Limited Liability Company,” the abbreviation “L.L.C.,” or the designation “LLC” as the last words of the name of the company. “Limited” and “Company” may be abbreviated as “Ltd.” and “Co.,” respectively, in the name of a limited liability company. *F.S.* 608.406(1)(a).

The corporate name must be distinguishable from the names of all other entities or filings organized, registered, or reserved under Florida law and filed with the department, except fictitious name registrations under *F.S.* 865.09. *F.S.* 607.0401(4).

#### B. [§3.3] Exclusions

The corporate name must not indicate that the corporation is organized for an unlawful purpose or for a purpose not permitted by its articles of incorporation. *F.S.* 607.0401(2). The corporate name also must not contain language that states or implies that the entity is connected with a federal or state government agency or a corporation chartered under the laws of the United States. *F.S.* 607.0401(3). Until the repeal in March 2000 of Fla. Admin. Code Chapter 1N-1, which provided guidance about corporate names containing words such as “Bank,” “Trust Company,” “Credit Union,” “Lottery,” “Olympic,” or any misleading derivations, the use of those words was prohibited unless the corporations were formed for those purposes, respectively, and approved by the appropriate agency or committee. Each of the words listed in the repealed chapter, with the exception of “Olympic,” retains the requirement of previous approval on an independent statutory basis. See *F.S.* 655.922(1)–(2) (prohibiting the use of any name containing the words “bank,” “banco,” “banque,” “banker,” “banking,” “trust company,” “savings and loan association,” “savings bank,” “credit union,” or words of similar import, that implies that the business is done by a financial institution unless the entity actually is a financial institution under the financial institutions codes or federal law); *F.S.* 24.119 (“[t]he corporate name of a corporation shall not contain the word ‘lottery’ unless the Department of the Lottery approves such name in writing”). These statutes do not constitute an exhaustive list of all potential corporate name exclusions or limitations.

Practitioners are advised to reference all statutes and regulations pertinent to the subject area of the intended corporate name and to contact the department about any specific concerns or questions.

C. [§3.4] Legal Standard

The legal standard in the Florida Administrative Code by which a name was determined to be valid or invalid was whether a particular name was distinguishable from registered corporate or other names under which business was transacted. However, with the repeal of Chapter 1N-1, that standard is no longer authoritative. Practitioners must rely solely on the general language contained in the Florida Business Corporation Act which, as discussed above, states that a corporate name “[m]ust be distinguishable from the names of all other entities or filings.” *F.S.* 607.0401(4). The department retains the general power to administer the Florida Business Corporation Act, *F.S.* Chapter 607, and the Florida Not For Profit Corporation Act, *F.S.* Chapter 617, as these laws relate to corporate names, but is currently doing so without offering guidance in the form of authoritative rules. See *F.S.* 607.0130(4). Even if the Division of Corporations determines that the corporate name is distinguishable from other existing names, a third party might still challenge the use of that name on trademark, deceptive trade practices, or similar grounds. Stuart R. Cohn & Stuart D. Ames, *FLORIDA BUSINESS LAWS ANNOTATED* (2011-2012 ed., West 2011), Author Commentary to *F.S.* 607.0401.

D. [§3.5] Determining Availability

The availability of the corporate name should be investigated before preparation and execution of the articles of incorporation. This ensures that time will not be wasted on an unavailable name. Availability of a name can be determined by inquiry on the department’s website, [www.sunbiz.org](http://www.sunbiz.org). (A telephone inquiry to determine name availability can no longer be made to the department.) Because corporate names may no longer be reserved in Florida for future use (see §3.6 below), the availability of a corporate name at the time of inquiry does not necessarily mean the corporate name will be available at the time the articles of incorporation are filed. It is therefore advisable to file articles promptly after determining that a particular corporate name is available. Otherwise, another incorporator may file using the desired name.

Other registers and records should also be checked to confirm that the proposed name is distinguishable from other names that may already be in use. For instance, to fully protect the future corporate entity, trademark registers for the particular area in which the corporation will do business should be consulted.

Trademark names, as well as names registered under the Fictitious Name Act, *F.S.* 865.09, can be accessed at [www.sunbiz.org](http://www.sunbiz.org).

Once a corporation has been dissolved, its name may become available 120 days after the effective date of the dissolution to other persons or entities wishing to register that name unless the dissolved corporation provides the department with an affidavit, executed consistent with the requirements of *F.S.* 607.0120, authorizing immediate assumption or use of the name by another corporation. *F.S.* 607.1405(4). If the dissolution was involuntary, the name will be unavailable for use by another corporation for one year from the date of the administrative dissolution unless the corporation provides the department with an affidavit authorizing immediate assumption of the name. *F.S.* 607.1422(4).

### III. [§3.6] RESERVING CORPORATE NAME

Corporate name reservation is not available in Florida. The Florida Legislature repealed *F.S.* 607.0402 (1997), which had provided for reservation of corporate names, effective July 1, 1998. Ch. 98-101, §15, Laws of Fla. However, see §§3.8 and 13.6 of this manual for discussions concerning registration of a corporate name for foreign corporations.

### IV. [§3.7] RIGHTS FOR USE

The act of incorporation and, hence, the acceptance of the corporate name by the department do not act as an adjudication of the legality of the use of the corporate name. See *Shatterproof Glass Corp. v. Buckmaster*, 256 So.2d 531 (Fla. 2d DCA 1972) (stressing that department's granting of corporate name was permissive only and such granting did not adjudicate legality of name). Even after the department accepts the corporate name, other persons or entities may still file actions for injunctive relief or damages, claiming that the registration of the name is in violation of the deceptively similar standard. See, e.g., *American United Life Insurance Co. v. American United Insurance Co.*, 731 F. Supp. 480 (S.D. Fla. 1990).

### V. FOREIGN CORPORATIONS

#### A. [§3.8] Application

A foreign corporation may register its corporate name, or its corporate name together with any addition required by *F.S.* 607.1506, if that name satisfies all other Florida statutory requirements and is distinguishable from all

other corporate names of entities or filings, except fictitious name registrations under *F.S.* 865.09. *F.S.* 607.0403(1)–(2); 607.1506(2)(d). To register its corporate name, a foreign corporation must deliver an application to the department with the statutory fee. *F.S.* 607.0122. This application must state its corporate name, any required addition to the existing corporate name, the state or country and date of its incorporation, and a brief description of the nature of the business in which the corporation is engaged. *F.S.* 607.0403(2)(a). The application must be accompanied by a certificate of existence or a certificate stating that the corporation is in good standing under the laws of the state or country where it is organized. (Any other document of similar import from the foreign state or country of incorporation may be used.) *F.S.* 607.0403(2)(b). See §13.6 of this manual for further discussion of the registration of a corporate name for foreign corporations.

B. [§3.9] Term Of Registration And Renewal

The exclusive use of the name is registered for the applicant on the effective date of the application and is “effective until the close of the calendar year in which the application for registration [was] filed.” *F.S.* 607.0403(3). The foreign corporation may renew its registration from year to year by filing a renewal application that complies with the requirements discussed in §3.8 between October 1 and December 31 of each year. The filed renewal application renews the registration for the following calendar year. *F.S.* 607.0403(4).

C. [§3.10] Use Of Name

On the effective date of the registration, a foreign corporation may qualify as a foreign corporation under the registered name. The corporation may also consent in writing to the use of that name by a corporation thereafter incorporated under *F.S.* Chapter 607 or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name. *F.S.* 607.0403(5).

D. [§3.11] Revocation Of Registration

The department may revoke any registration after a hearing if a finding is made that the application or a renewal was not filed in good faith. *F.S.* 607.0403(6).

See Chapter 13 of this manual for a more detailed discussion of foreign corporations.