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AB-878 Business filings: fictitious business names. (2023-2024)

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Assembly Bill No. 878

CHAPTER 20

An act to amend Sections 17913, 17919, 17920, 17922, and 17923 of the Business and Professions Code, relating to business.

[Approved by Governor June 29, 2023. Filed with Secretary of State June 29, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 878, Pellerin. Business filings: fictitious business names.

Existing law requires a person who regularly transacts business in the state for profit under a fictitious business name to file a fictitious business name statement in accordance with prescribed requirements within 40 days of commencing to transact business. Under existing law, a fictitious business name statement expires 5 years from the date it was filed in the office of the county clerk or 40 days after any change in specified facts included on that statement, except that a change in the residence address of an individual, general partner, or trustee does not cause the statement to expire.

This bill would delete the above-specified exception.

Existing law requires a business that ceases to transact business in the state under a fictitious business name to file a statement of abandonment of the use of the fictitious business name. Existing law authorizes a registrant who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name, upon withdrawing as a general partner, to file a statement of withdrawal from the partnership operating under a fictitious business name. Existing law requires the registrant who files a fictitious business name statement, statement of abandonment, or statement of withdrawal to include specified information, including the registrant's name and residence address.

This bill would require any registrant who files a fictitious business name statement, statement of abandonment, or statement of withdrawal to include a business mailing address instead of a residence address.

This bill would delete obsolete references and make other technical, nonsubstantive changes to these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

*

at ** :

This business is conducted by ****

The registrant commenced to transact business under the fictitious business name or names listed above on

I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

Registrant signature

Statement filed with the County Clerk of ____ County on

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The fictitious business name statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one fictitious business name statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of the registrant's principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of the registrant's principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert the registrant's full name and business mailing address if it differs from the business address. If the registrants are a married couple, insert the full name and business mailing address of both parties to the marriage if it differs from the business address. If the registrant is a general partnership, copartnership, joint venture, or limited liability partnership, insert the full name and business mailing address of each general partner if it differs from the business address. If the registrant is a limited partnership, insert the full name and business mailing address of each general partner. If the registrant is a limited liability company, insert the name and business mailing address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and business mailing address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and business mailing address of each domestic partner if it differs from the business address. If the registrant is an unincorporated association other than a partnership, insert the name of each person who is interested in the business of the association and whose liability with respect to the association is substantially the same as that of a general partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) "an individual," (ii) "a general partnership," (iii) "a limited partnership," (iv) "a limited liability company," (v) "an

unincorporated association other than a partnership," (vi) "a corporation," (vii) "a trust," (viii) "copartners," (ix) "a married couple," (x) "joint venture," (xi) "state or local registered domestic partners," or (xii) "a limited liability partnership."

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, "Not applicable."

(c) The registrant shall declare that all of the information in the fictitious business name statement is true and correct. A registrant who declares as true any material matter pursuant to this section that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

(d) (1) At the time of filing of the fictitious business name statement, the registrant filing on behalf of the registrant shall present personal identification in the form of a California driver's license or other government identification acceptable to the county clerk to adequately determine the identity of the registrant filing on behalf of the registrant as provided in subdivision (e) and the county clerk may require the registrant to complete and sign an affidavit of identity.

(2) In the case of a registrant utilizing an agent for submission of the registrant's fictitious business name statement for filing, at the time of filing of the fictitious business name statement, the agent filing on behalf of the registrant shall present personal identification in the form of a California driver's license or other government identification acceptable to the county clerk to adequately determine the identity of the agent filing on behalf of the registrant as provided in subdivision (e). The county clerk may also require the agent to submit a notarized statement signed by the registrant declaring the registrant has authorized the agent to submit the filing on behalf of the registrant.

(e) If the registrant is a corporation, a limited liability company, a limited partnership, or a limited liability partnership, the county clerk may require documentary evidence issued by the California Secretary of State and deemed acceptable by the county clerk, indicating the current existence and good standing of that business entity to be attached to a completed and notarized affidavit of identity, for purposes of subdivision (d).

(f) (1) The county clerk may require a registrant that mails a fictitious business name statement to a county clerk's office for filing to submit a completed and notarized affidavit of identity. A registrant that is a corporation, limited liability company, limited partnership, or limited liability partnership, if required by the county clerk to submit an affidavit of identity, shall also submit documentary evidence issued by the California Secretary of State indicating the current existence and good standing of that business entity.

(2) The county clerk may accept an electronic acknowledgment verifying the identity of the registrant using a remote identity proofing process ensuring the registrant's identification. The identity proofing process shall follow, to the extent reasonable, the federal guidelines for security and privacy and shall include dynamic knowledge-based authentication or an identity proofing method consistent with, at least, level 3 identity assurance, as described in the electronic authentication guidelines of the National Institute of Standards and Technology.

(g) A county clerk that chooses to establish procedures pursuant to this section shall prescribe the form of affidavit of identity for filing by a registrant in that county.

SEC. 2. Section 17919 of the Business and Professions Code is amended to read:

17919. (a) A fictitious business name statement may be executed, filed, and published by the trustee in bankruptcy at any time after bankruptcy where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the debtor or bankruptcy estate or the partnership of which the debtor or bankruptcy estate was a member.

(b) A fictitious business name statement may be executed, filed, and published by the conservator, executor, or administrator at any time after the appointment of a conservator for or death of any individual or partner where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due the conservatee or deceased person or the partnership of which they were a member.

(c) A fictitious business name statement may be executed, filed, and published by an assignee or purchaser of the business at any time after the assignment or sale where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the assignee or purchaser by reason of the assignment or sale.

(d) The fictitious business name statement referred to in this section shall be in substantially the same form as prescribed in Section 17913, except:

(1) The person or persons who were doing business under the fictitious business name shall be stated as such person or persons existed (i) immediately before the bankruptcy, conservatorship, or death or the assignment or sale of the business or (ii) at the time they ceased to do business under the fictitious business name, whichever is the earlier time.

(2) The statement shall include the following additional sentence: "This statement has been executed pursuant to Section 17919 of the Business and Professions Code."

(3) The person executing the statement shall (i) sign the statement on behalf of the person or persons formerly doing business under the fictitious business name, (ii) state their full name and the street address of their place of business or, if they have none, of their business mailing address, and (iii) indicate whether they are a trustee in bankruptcy, conservator, executor, or administrator or assignee or purchaser of the business.

SEC. 3. Section 17920 of the Business and Professions Code is amended to read:

17920. (a) Unless the statement expires earlier under subdivision (b) or (c), a fictitious business name statement expires five years from the date it was filed in the office of the county clerk.

(b) Except as provided in Section 17923, a fictitious business name statement expires 40 days after any change in the facts set forth in the statement pursuant to Section 17913.

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

SEC. 4. Section 17922 of the Business and Professions Code is amended to read:

17922. (a) Upon ceasing to transact business in this state under a fictitious business name that was filed in the previous five years, a registrant who has filed a fictitious business name statement shall file a statement of abandonment of use of fictitious business name. The statement of abandonment shall be executed in the same manner as a fictitious business name statement, excluding the requirements of subdivisions (d), (e), and (f) of Section 17913 and shall be filed with the county clerk of the county in which the registrant has filed the fictitious business name statement. The statement shall be published in the same manner as a fictitious business name statement and an affidavit showing its publication shall be filed with the county clerk after the completion of publication.

(b) The statement shall include:

(1) The name being abandoned and the street address of the principal place of business.

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

(3) In the case of an individual, the full name and business mailing address of the individual.

(4) In the case of a married couple, the full name and business mailing address of both parties to the marriage.

(5) In the case of a general partnership, a limited partnership, copartners, a limited liability partnership, a joint venture, or an unincorporated association other than a partnership, the full names and business mailing addresses of all of the general partners.

(6) In the case of a corporation, the name and address of the corporation as set forth in its articles of incorporation on file with the California Secretary of State.

(7) In the case of a trust, the full name and business mailing address of each of the trustees.

(8) In the case of a limited liability company, the name and address of the limited liability company as set forth in its articles of organization on file with the California Secretary of State.

(9) In the case of state or local registered domestic partners, the full name and business mailing address of each domestic partner.

SEC. 5. Section 17923 of the Business and Professions Code is amended to read:

17923. (a) Any registrant who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement of withdrawal shall be executed by the registrant filing the statement in

the same manner as a fictitious business name statement, excluding the requirements of subdivisions (d), (e), and (f) of Section 17913, and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed, the file number, and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full names and business mailing addresses of the registrant or registrants withdrawing as partners.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal meeting the requirements of this section.