



CHICAGO BULL

(12-12-2017, REV. 8-16-2019)

**Assumed Business Names:
NEW statute,
NEW requirements,
NEW search engine!**



Effective December 1, 2017*, there is a brand new [Assumed Business Name Act](#) in North Carolina – Article 14A, of Chapter 66 of the N. C. General Statutes, N.C. Gen. Stat. §§66-71.1 et seq.! Any individual or business operating under an assumed business name, i.e. any name other than their real legal or official name, must file a Certificate of Assumed Business Name with their local register of deeds, which will automatically be transmitted to and locatable on the records of the Secretary of State. The search site, forms, fees and other information about the process have been completely revised and are on-line at the office of the Secretary of State [Assumed Business Names website!](#) A few notable issues are outlined below. (*NOTE regarding EFFECTIVE DATE: [S.L. 2016-100](#) as extended to take effect December 1, 2017, and requirement for existing businesses to re-file was extended to December 1, 2022, by [S.L. 2017-23](#).)

CAUTION: The requirement may apply when you are not expecting it!

This statute is much more detailed and broader in its mandate than the predecessor (N.C. Gen. Stat. § 66-68). The new provisions specifically apply to any of the following operating under a name which is not their “real name”:

The “person” who files the Certificate and adopts the Assumed Business Name is very broadly defined! This includes “an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity. These may not be and probably will not be unique, as has been the requirement for other entities filed with the Secretary of State. NOTE: Keep in mind the “real name” would be based on compliance with the applicable statute, some of which are noted below. See [S.L. 2019-117](#), §4, clarifying G.S. 66-71.5.

- **Individual**, such as Joe Smith operating as Joe’s Plumbing.
- **Partnership** (N.C. Gen. Stat. § 59-84.1, other than limited liability partnerships or limited partnerships) such as Joe Smith and Sam Jones operating as J&S Resort Investments.
- **Corporation** (N.C. Gen. Stat. Ch. 55 or Ch. 55A), **limited partnership** (N.C. Gen. Stat. Ch. 59), **limited liability company** (N.C. Gen. Stat. Ch. 57D) or **other entity** filed with the Secretary of State if they are using a different name from their official name filed with the Secretary of State.

EXAMPLE: Your developer client has multiple neighborhoods and operates, markets and advertises using a related name specific to each particular neighborhood, such as “Happy Builders at Friendly Acres” while the property is owned by and the only business entity is still just Happy Builders, Inc. EXAMPLE: Smith’s Contracting, Inc., which may have a division doing business as Smith’s Plumbing Repair but under the same corporate umbrella.

- **Trust** if using a name other than (1) the name specified in the trust agreement or (2) if no name is specified in the trust, the name of the trustee or designation of the trust for which the trustee is acting. NOTE: Again, the “real name” would be determined based on the statutorily mandated filings for the particular type of entity. For example, N.C. Gen. Stat. Ch. 61 would apply to religious societies for which title is held in trust. And N.C. Gen. Stat. § § 39-44 et seq. would apply to business trusts.
- **Other entity (association)** might include, for example, an unincorporated nonprofit association under N.C. Gen. Stat. Ch. 59B.

Forms! Forms! Forms!

The Assumed Business Name Certificate must include:

1. The assumed business name.
2. A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.
3. The nature of the business.
4. The street address of the principal place of business.
5. Each county where the person uses or will be using the assumed business name to engage in business.

As noted above, the forms, fees and other information are on-line at the office of the Secretary of State [Assumed Business Names website](#) and offered on-line or in the offices of some registers of deeds. The Certificate must be recorded with the register of deeds in the county in which the business is or will be engaging in business (not the Secretary of State despite their “Search” index). But the filer can choose “all counties” – and we recommend that option! We always hope that our businesses will flourish so why not be prepared! The Certificate must be signed by a general partner (for any type partnership), by an officer of a corporation, by a manager of a LLC or by another individual authorized by law to act for the corporation or LLC. Up to 5 assumed business names can be included on one certificate, so long as all are owned and operated by the same “person” filing it. Any amendment must be filed with 60 days of the change in the same register of deeds office, specifically referencing the prior filing by book and page as well as the Secretary of State’s SOS ID number. See [S.L. 2019-117](#), §5 for statutory forms, effective October 1, 2019.

The transition rule: Existing businesses already operating under certificates of assumed name filed under the previous Article 14 have until December 1, 2022*, to file their new Certificate of Assumed Business Name under new Article 14A, unless otherwise required due to withdrawal or amendment. Unfortunately, no notification provision (or funding) was included in the legislation. So this will be a matter of attorneys advising affected clients and the Secretary of State and registers of deeds providing the information to the public as requested and on their websites.

Searches: So hopefully we will be able to find most “assumed business names” and the related principals’ contact information in a centralized location with other entities in the near future! The Certificates will be automatically transmitted by the Registers to the Secretary of State for inclusion in the centralized “[Business Registration >> Search](#)” database maintained with the Office of the Secretary of State under “Other Searches” >> Assumed Business Name (by county or statewide). Very shortly,

they hope to have a combined search integrated with corporations and other entities, which we all search regularly!

Reliance: Of importance to real estate and business attorneys, the recorded certificate is prima facie evidence of the facts required to be stated therein.

So this should provide one more step for transparency of the parties with whom we transact business daily!

