

Town of Berkley

What is a Doing Business As Certificate and Who Must File?

FILING A BUSINESS CERTIFICATE (DBA)

(Massachusetts General Laws, Chapter 110, Section 5, 6; 227:5A)

WHAT IS A BUSINESS CERTIFICATE, DBA (doing business as)?

A Business Certificate is a local registration of a business that is conducted within the Town and filed with the Town Clerk, either in person or by mail, in every city/town where a business of any such person, partnership or corporation may be situated. It is commonly referred to as a "d/b/a" (doing business as). The primary purpose of filing is to protect consumers or creditors by identifying the names and addresses of the owners of the business. Essentially, the public has a right to know who "is" a particular business, since a customer will not know who owns the business simply by the name of the business.

NOTE: A business certificate is not a license to do business in the Town of Berkley. Additional licenses/permits issued by other town departments or state agencies may be required in order to do business. Please refer to the Town of Berkley Zoning Bylaws for conducting a business. If needed you may be required to check with the Building Inspector, Zoning Department and/or Board of Health.

WHO MUST FILE?

Any person conducting a business under any title (business name) other than the complete real name of the person conducting the business must file a certificate. A person is defined as an individual, a partnership, or a corporation.

Exemptions to filing are allowed under section 6 if the corporation is doing business in its true corporate name, or if a legal partnership is doing business under any title which includes the true surname of any. Certain other exemptions exist for trusts and limited partnerships.

WHO MUST SIGN THE BUSINESS CERTIFICATE?

If the business is owned solely by one person, only that person needs to sign. If it is a partnership of two or more people (but not a formal legal entity), both or all of the "partners" must sign. If it is a legal partnership, any officer who has authority to sign on behalf of the partnership may do so. If it is a corporation, an officer who has signatory authority must sign – which is usually the President, but not always. All signatures must be made in front of a notary, the Town Clerk or the Assistant Town Clerk. Do not sign

the certificate unless it is in front of one of these three individuals. An individual must be 18 years of age or older to legally sign a business certificate.

HOW LONG IS MY BUSINESS CERTIFICATE GOOD FOR?

Business Certificates are valid for a period of four (4) years from the date of its original filing. They must be renewed every four (4) years for as long as the business is being conducted.

WHAT IF I "GO OUT OF BUSINESS", CHANGE MY RESIDENCE; CHANGE THE LOCATION OF THE BUSINESS OR WANT TO CHANGE THE NAME OF THE BUSINESS?

Change of Residence as listed on certificate, change of location of the business within town (but keeps the same business name): You must file either a *Statement of Change of Residence*, or a *Statement of Change of Location of Business*.

Discontinuance of business, retire or withdraw from conducting business (i.e.: go out of business or move it to another town): You must file a *Statement of Discontinuance*. If you will be conducting a *"Going Out of Business Sale"* please contact the Town Clerk's office regarding the legal requirements for this type of sale.

Change the name of the business: You must first file a *Discontinuance* and then file a new Certificate for the new business name. You cannot simply change the name of the business as technically you are stopping business in one name and starting business in a new name.

In case of death of the owner of the registered business(d/b/a): A statement may be filed by the executor or administrator of the estate.

DOES THE FILING OF A BUSINESS CERTIFICATE PROTECT ME FROM OTHER USING THE SAME NAME?

No, The protection of a trademark (word, name, symbol or device) in Massachusetts is accomplished through the Secretary of State's Office. (See website below)

WHAT IS THE FEE TO FILE A CERTIFICATE OR STATEMENT?

Filing/Renewal of a Business Certificate- \$30.00 (4 years).

MUST I DISPLAY A COPY OF MY BUSINESS CERTIFICATE?

The law states that copies of your certificate must be available at the address at which the business is conducted, and shall be produced for inspection upon request during regular business hours to any person who has purchased goods or services from such business.

WHAT IS THE PENALTY IF I DO NOT FILE A CERTIFICATE OR STATEMENT?

The law states that violations will be punished by a fine of not more than three hundred dollars (\$300.00) for each month during which the violation continues.

WHERE DO I GET THE FORMS AND HOW DO I FILE?

All forms may be obtained from and filed at the Town Clerk's office during normal business hours (Monday-Thursday 9:30am – 2:30pm).

Forms that require to be notarized can be mailed back to the Town Clerk at 1 North Main Street, Berkley MA with a check made out to the Town of Berkley.

WHERE DO I GET TAX INFORMATION REGARDING MY BUSINESS?

The Massachusetts Department of Revenue (DOR) can answer all of your questions regarding collecting sales tax or other tax questions you may have. The Taxpayer Assistance Bureau is open from 8:45am – 5pm, Monday – Friday. The toll free number is 1 (800) 392-6089 or (617) 887-6367. The DOR has a publication entitled "A Guide to Sales and Use Tax" which answers the most commonly asked questions about sales/use tax.

You obtain an FID number from the IRS at (800) 829-1040 or (617) 523-1040.

Websites:

Department of Revenue <http://www.dor.state.ma.us/>

Secretary of State's office www.state.ma.us

Where do I apply for a DBA Certificate/Business Certificate?

Corporations:

A corporation must file a DBA unless they are doing business under the true corporate name. For example, if the corporation is Linder Products Inc. and the store is called Bouncy Bears (not Linder Products) then a DBA must be filed. The consumer must be able to contact the Town Clerk to obtain contact information on the owner of the

business. Whether or not the corporation has filed with the State as required is not relevant and we do not ask.

(Massachusetts General Laws, Chapter 110, Section 5, 6; 227:5A)

Section 6

The preceding section shall not apply to any corporation doing business **under its true corporate name**, nor to any partnership doing business under any title which includes the true surname of any partner; nor to any association which has complied with sections five and six of chapter one hundred and fifty-nine; nor to any partnership, joint stock company or association the business of which is conducted by trustees under a written instrument or declaration of trust, provided that the names of such trustees with a reference to such instrument or declaration of trust shall be filed as provided in section five, nor to any limited partnership organized or qualified under chapter one hundred and nine doing business under its true partnership name if such name contains without abbreviation the words "limited partnership"; nor to a limited liability company or limited liability partnership which is doing business under its true name and which has registered or qualified with the office of the state secretary.