

CHAPTER 7-BUSINESS AND PARTNERSHIP NAMES

80. WHEN PARTNERSHIP OR BUSINESS NAME MAY BE CONTINUED

The use of a partnership or business name may be continued in either of the following cases:

1. Where the business of any firm or partnership within the territorial jurisdiction of the Nation, having business relations with foreign countries or which has transacted business in this Nation or in any state or territory of the United States continues to be conducted by some or any of the partners, their or any of their assignees, appointees or successors in interest.

2. Where any partnership shall hereafter be formed under the laws of this Nation it may use the firm or corporate name of any general or limited partnership or of any corporation, domestic or foreign, which may theretofore have carried on its business within the Nation, where said general or limited partnership or corporation has discontinued or shall be about to discontinue its business within the Nation, and where a majority of the partners, general or special, in either of such last mentioned co-partnership or of the survivors thereof shall be members of the new co-partnership, or where a majority of the members of such co-partnership theretofore existing or of the surviving members thereof, or where stockholders holding a majority of the stock of such corporation shall consent in writing to the use of such firm or corporate name by such new co-partnership; or

3. Where any resident of this Nation dies, who at the time of his death and for at least five years immediately prior thereto, conducted and carried on in his sole name, any business in the Nation, or who at the time of his death, so conducted and carried on any business having relation with states or foreign countries, the right to use the name of such person, for the purpose of continuing and carrying on such business, shall survive and pass and be disposed of and accounted for as a part of the personal estate of such deceased person, and such business may be continued and carried on under such name by any person who comes into legal possession thereof.

81. CERTIFICATE TO BE FILED

Whenever a partnership or business name continues to be used as provided by section eighty, the person or persons using such name shall sign and acknowledge or swear to a certificate, declaring the person or persons intending to deal under such name, with their respective places of residence, and file the same in the Nation Clerk's office.

82. FICTITIOUS FIRM NAMES PROHIBITED

(a) No person shall hereafter transact business in the name of a partner not interested in his firm, and when the designation "and company," or "and Co." is used, it shall represent an actual partner; but a violation of this section shall not be a defense in an action or proceeding brought by an assignee for the benefit of creditors or by a receiver of the property of or by an executor or administrator of a person who has violated the same.

(b) (1) No person shall carry on or conduct or transact business in the Nation as a member of a partnership, unless

(A) Such person, shall file in the office of the Nation Clerk a certificate setting forth the name or designation under which and the address at which such business is conducted or transacted, the full name or names of the person or persons conducting or transacting the same, including the names of all partners, with the residence address of each such person, and the age of any person less than eighteen years of age. Each certificate shall be executed and duly acknowledged by the person or, if there be more than one, by all of the persons conducting the business.

(c) No person or persons shall hereafter use or file a certificate for the use of any name or designation to carry on or conduct or transact business in the Nation which consists of or includes words, or initials and a word or words, which are or appear to be the full name or names, or the initials or initials and family name of a person or persons, or a colorable simulation thereof, unless:

(1) the words or initials and word or words appearing to be the full name or initials and family name of a person included, are the true full name or the initials and family name of the person or one of the persons conducting the business; or

(2) the words or initials and words so included, which are or appear to be the full name, or the initials and family name, of any person, have a secondary, historic or geographic meaning or connotation apart from that of a name of a person, and the name or designation so used contains a word or words clearly signifying such secondary, historic or geographic meaning or connotation, or is followed by the abbreviation "a.m.", and said secondary, historic or geographic meaning or connotation is stated in the certificate; or

(3) the person or persons conducting the business are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

(d) Whenever a certificate which has been filed under this section does not accurately set forth the facts required by this section, or within thirty days after there has been a change in such facts, an amended certificate shall be filed which shall identify the original certificate and incorporate the corrections or changes. If such amended certificate is filed for the purpose of adding or withdrawing the name of any person to the original certificate as a person conducting a

business or as a partner, such amended certificate must be executed and acknowledged by such person and by any one or more of the other persons named in the original or last amended certificate, unless otherwise provided by a order of the supreme court. Any other amended certificate may be executed and acknowledged by any one or more of the persons named therein as person conducting the business as a partner.

(e) A certified copy of the original certificate, or if an amended certificate has been filed, then of the most recent amended certificate filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.

(f) The Nation Clerk shall keep an alphabetical index of all certificates filed by partnerships, together with appropriate notations of the nature of amended certificates and certificates of discontinuance; and for the indexing and filing of such certificates, the Nation Clerk shall receive a fee of twenty-five dollars (\$25.00).

(g) A copy of a certificate filed under the provisions of this section, duly certified to by the Nation Clerk, shall be presumptive evidence in the court of the facts therein contained; provided, however, that neither the certificate itself nor the filing thereof shall, for any purpose other than this section, constitute or be construed as an admission by the filing person, or be used as evidence, that such person does or has done business or has carried on, conducted or transacted business in the Nation, or intended to do so.

(h) This section shall not apply to a partnership which, has duly filed a certificate of continued use of firm name under the partnership law, or to a partnership who has filed a certificate of discontinuance.

(i) The failure to comply with the provisions of this section shall in no way affect the rights of third persons, nor shall this section be deemed or construed to limit the liability of partners under the provisions of the partnership law.

(j) The acceptance of a certificate by the Nation Clerk for filing pursuant to the provisions of this section shall not be construed to confer any right to or interest in any trade name; nor shall any of the provisions of this section be construed to affect the rights to, or the enforcement of any rights to, any trade name acquired at any time.

(k) Any person or persons carrying on, conducting or transacting business as aforesaid, who knowingly fails to comply with the provisions of this section or who knowingly makes a false statement in a certificate filed thereunder shall be guilty of a misdemeanor. Any person or persons carrying on, conducting or transacting business as aforesaid who fails to comply with the provisions of this section shall be prohibited from maintaining any action or proceeding in the court on any contract, account or transaction made in a name other than its real name until the certificate required by this section has been executed and filed in accordance with the provisions set forth herein.

(l) If the business for which a certificate is filed under this section is discontinued, or the conditions under which it is conducted are such that the filing of a certificate with the Nation Clerk is no longer required, a certificate of discontinuance may be filed with the Nation Clerk, identifying such certificate and also identifying the amended certificate, if any, last previously filed and certifying the facts by reason of which the filing of a certificate is no longer required. The certificate of discontinuance shall be executed and acknowledged in the same manner as an original certificate and shall specify the date of which the discontinuance occurred or the conditions under which the business is conducted changed so that the filing of a certificate is no longer required. The Nation Clerk shall note the discontinuance. A certificate of discontinuance shall be executed by a majority of the persons named in the original certificate or the amended certificate last previously filed as persons conducting or transacting the business or as partners. Such signatures may be dispensed with by order of the Nation Court.