

**Corporate Formalities Not to be Overlooked**  
**Avoid Exposing Yourself to Personal or even Criminal Liability**

*by Matthew D. Meadows*

Many business owners operate under what is commonly referred to as a trade name or fictitious name when conducting business and entering into contracts. However, in order to operate under a trade name or fictitious name, a business must first be a lawfully created entity, such as a corporation or limited liability company. Most people are quick to recognize that they are dealing with a corporation when they see a business name followed by the letters “Inc.” The main purpose behind including “Inc.” after a businesses legal name is to ensure that all parties are aware that they are dealing with an entity, not an individual. Individuals may choose to use a fictitious name or trade name for a variety of different reasons; however when doing so, business owners must be sure to adhere to certain filing requirements.

In Virginia, a fictitious name is required if business is conducted under a name other than the owners' legal name. An assumed or fictitious name certificate must be filed in the office of the Clerk of the Circuit Court in each county or city where business is to be conducted or the business may file its fictitious name with the State Corporation Commission. Believe it or not, the failure to file a fictitious name can have a devastating effect on a business and its owners. The failure to adhere to the above referenced filing requirements may expose the officers and members of such businesses to personal liability. Specifically, Virginia law prohibits a partnership, limited liability company or corporation from conducting or transacting business in the Commonwealth under any assumed or fictitious name which has not been properly filed. More importantly however is that under Virginia law, the use of an unregistered fictitious name may result in the imposition of criminal liability upon the violator.

The rationale for such laws is to prevent fraud and to ensure accountability amongst entities entering into contracts in names other than their legal name. For example, if a business has a legal name of The Greater Tidewater Building and Construction Company, Inc. but simply calls itself Tidewater Building, the public is entitled to know the name of the legal entity and its true owners. As such, a search of the office of the Clerk of Court in the city where the entity is conducting business would put the public on notice of the fact that Tidewater Building is in fact The Greater Tidewater Building and Construction Company, Inc. This further highlights the importance of properly executing contracts. Again, take for example the fictitious name Tidewater Building. Assume that The Greater Tidewater Building and Construction Company, Inc. entered into a contract with Jane Doe, and signed the contract “Tidewater Building” but never filed its fictitious name certificate. Now, if Jane Doe has an issue with the work performed under the contract and she searches the office of the Clerk of Court for the owner’s of Tidewater Building and its true legal name, she will be out of luck since the fictitious name certificate was never filed. Again, the intent is to protect Jane Doe from being the victim of fraud and ensuring that she will always be able to locate the legal owner of a business which chooses to use a fictitious name while conducting business. Likewise, in this example, by failing to properly file a fictitious name certificate, the

owners of The Greater Tidewater Building and Construction Company, Inc. have exposed themselves to both potential personal and criminal liability.

While this may appear to be a simplistic concept, many business owners overlook such corporate formalities, assuming that they are of no real importance. However, the imposition of personal or even criminal liability should give one enough cause for concern when deciding if adherence to corporate formalities is advisable. Should you have any questions or concerns regarding how your actions may affect your business, please feel free to call Matthew D. Meadows at 757-873-8020.