

Names for Business Entities

by Ann Baker, Corporation Division Director (This is the first part of an article reprinted from the Michigan Business Law Journal—Spring 2005)

To be "available," a name must contain a different sequence of letters or numbers than names of active domestic corporations, limited partnerships, and limited liability companies and foreign corporations, limited partnerships and limited liability companies authorized to transact business in Michigan. However, availability does not always mean that the preferred name will be permitted to be used. Lawyers and their clients are frequently frustrated when notified that the name selected contains a word or phrase that is restricted or prohibited or, taken as a whole, implies a purpose other than a purpose permitted by the articles of incorporation for a domestic corporation, articles of organization for a domestic limited liability company, application for certificate of authority for a foreign corporation or foreign LLC, or by the Certificate of Limited Partnership for a domestic limited partnership or Application to Register a foreign limited partnership.

Restricted Word List

A list of words and phrases restricted in use by law, rule, or public policy has been posted on the Corporation Division's Web site for several years. Generally, the list identifies limitations that are outside the statutes administered by the Corporation Division. Recently, the list was reviewed, revised, and updated to include current information and statutory citations for limitation or restriction. The restricted word list is available on the Web at www.michigan.gov/corporations under "Forms & Publications" and then "Publications."

The Business Entity Search feature will be upgraded to include name availability searching. If any words or phrases on the restricted word list are in the name being checked the program will identify the word or phrase and refer the user to the restricted word list. This additional feature will allow the person searching for name availability on the Web site to be aware if there are restrictions or limitations on the use of some words or phrases.

Names implying services in a learned profession

For several years, if a corporation or limited liability company that did not provide services in a learned profession wanted to use a name or include purposes in its governing documents that implied they were providing such services, the documents were filed if the articles included a provision stating that the entity would not engage in activities that may only be performed by one of the learned professions. The option was crafted for situations in which an entity had a business reason for using the name but indicated that the entity was not offering to the public services of a learned profession.

The Bureau of Commercial Services (Bureau) is aware that several entities that included such a declaration do, in fact, provide services in a learned profession and have exceeded their authority. The Bureau is taking several steps to increase awareness that profit corporations and limited liability companies providing services in a learned profession must be formed as professional service corporations and professional limited liability companies. The Corporation Division staff has been

instructed to be more careful and ask more questions before accepting for filing documents with names or purposes that imply the entity is providing services in a learned profession. The Division is reviewing its records and may contact corporations and limited liability companies if the information in the record indicates that the entity may be improperly formed or exceeding its authority. The Bureau is reviewing its policies regarding such situations and will consider modifications that will increase the likelihood that entities will be formed and operate under the appropriate statute.

Frequently, an inconsistency between the purposes and the proposed name will result in the document being rejected. For example, filing delays may occur if a company that will be a management company or landlord has purposes or a name that implies that it is a health care provider. The purposes and name should accurately reflect what the entity is actually doing. If the articles have an all-purpose clause and the name implies the entity is providing services in a learned profession, a further inquiry into the business to be conducted will be made.