

## Choosing a corporate name: practical considerations and legal requirements

Deciding on the name for your to-be-formed company can be a stressful process, given the seemingly endless number of possibilities and the limited legal requirements. Whether you have brainstormed a robust list of potential names and are having difficulty taking the final plunge or are just now starting your search for the perfect name, we believe the practical considerations and legal overview below may be helpful to both new and experienced entrepreneurs when it comes to navigating the name selection process.

### What is a corporate name?

The commonly used term "corporate name" is a bit of a misnomer, because certain state naming requirements also apply to non-corporate entities. As most entrepreneurs are likely aware, entities must adopt an official name at formation that complies with state-specific legal requirements. While the requirements for legal names tend to vary in minor ways state by state, two basic requirements need to be considered, regardless of the entity's state of incorporation:

1. A corporate name must always include an expressly authorized "suffix" (often referred to as an "entity designator" or "entity indicator") indicating the company's entity type and limited liability status
2. The proposed corporate name must be distinguishable from those of existing entities in the state of incorporation

Though the focus of this article is on corporations and limited liability companies (which are by far the two most prominent entity structures used for aspiring venture-backed startups), it is important to keep in mind that certain name-related legal requirements can apply to other entity types as well.

### What must my corporate name include?

Regardless of its state of incorporation, each corporation and limited liability company must include one of a handful of expressly permitted suffixes in its legal name to denote the company's entity type and limited liability status. While there are a small number of universally accepted entity designations ("Corporation," "Incorporated," "Corp.," "Inc.," "Limited Liability Company" and "LLC"), there are also a number of state-specific suffixes that founders can use instead if they feel so inclined. A list of the permitted suffixes in Delaware, California and Washington, three of the most popular states for forming a new business entity, is set forth in the table below.

	Corporation	LLC
Delaware	"Association," "Company," "Corporation," "Club," "Foundation," "Fund," "Incorporated," "Institute," "Society," "Union," "Syndicate," or "Limited" (or abbreviations thereof, with or without punctuation) or words of similar meaning of foreign countries or jurisdictions (so long as they are written in roman characters or letters)	"Limited Liability Company," or the abbreviation "L.L.C." or the designation "LLC"
		"Limited Liability Company," or the abbreviation "L.L.C." or "LLC"

<b>California</b>	"Corporation," "Incorporated," or "Limited" (or abbreviations thereof)	("Limited" may be abbreviated as "Ltd." and "Company" may be abbreviated as "Co.")
<b>Washington</b>	"Corporation," "Incorporated," "Company," "Limited," "Corp.," "Inc.," "Co.," or "Ltd.," or words of similar meaning in another language	"Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC"

## Are there any terms that cannot be included in my corporate name?

In addition to the affirmative entity designation requirements described above, state law also expressly prohibits the inclusion of certain terms in corporate names. These prohibitions are in place to reduce consumers' risk of confusion as to an entity's business (eg. if the company is a software development company, it cannot represent that it is a "bank" in its name) and also helps distinguish between entity types. A list of the prohibited terms in Delaware, California and Washington is set forth in the table below.

	<b>Corporation</b>	<b>LLC</b>
<b>Delaware</b>	"Trust" and "Bank" (or any variation thereof – unless used in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business)	"Bank" (or any variation thereof – unless used in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business)
<b>California</b>	"Bank," "Trust," "Trustee" or related words	"Bank," "Trust," "Trustee," "Incorporated," "Inc.," "Corporation," "Corp.," "Insurer" or "Insurance Company" (or any other words suggesting the company is in the business of issuing insurance policies or assuming insurance risks)
<b>Washington</b>	"Bank," "Banking," "Banker," "Trust," "Cooperative" or any combination of the words "Industrial" and "Loan," or any combination of any two or more of the words "Building," "Savings," "Loan," "Home," "Association" and "Society"	"Cooperative," "Partnership," "Corporation," "Incorporated" or the abbreviations "Corp.," "Ltd.," or "Inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLP" or "L.L.L.P"

## What if a company already exists with a similar name?

As a general rule, two entities are not allowed to share the same legal name in any state. However, states differ in their approach as to how distinguishable a proposed corporate name must be from an existing name before it is acceptable.

At the outset, it should be noted that the distinguishability of a legal name for purposes of state corporate law is entirely separate from the strength of the name from a trademark perspective (which analyzes the mark on a distinctiveness scale –

generic marks typically receiving little to no protection) or availability of an Internet domain name. While beyond the scope of this article, it is often a good idea to seek assistance from a trademark attorney early on to analyze the strength of your proposed corporate name from a trademark standpoint, especially if you anticipate that your company name and your core product name will align. Checking with Internet domain name vendors is also an important step in the process.

State corporate law is not concerned with how distinct a proposed legal name is as a general matter, but rather the extent to which the proposed name is distinguishable from existing entity names. While the distinguishability analysis is often subjective (and therefore reliant to some extent on the judgment of the reviewing government employee), a few general rules typically hold true:

1. Simply varying the "suffix" of an otherwise identical corporate name *does not* render it "distinguishable" (eg, if "ACME Inc." is an existing corporation, "ACME Corp." is typically not considered distinguishable)
2. The use of the plural form of a word in an otherwise identical corporate name typically *does not* render it "distinguishable" (eg, if "Widget Inc." is an existing corporation, "Widgets Inc." is typically not considered distinguishable)
3. Adding a separate modifier into a corporate name *is often sufficient* to establish distinguishability (eg, if "ACME Inc." is an existing corporation, "ACME Holdings Inc." is typically sufficiently distinguishable for purposes of state corporate law)

## Can I run a search to see if my desired name is already in use?

Yes – most states provide public access to statewide search engine tools, which allow the public to look for existing organizations based on keywords or other criteria. We typically recommend that founders run a search for their proposed corporate name not only in their intended state of incorporation, but also in each state in which the founders anticipate that the to-be-formed company will conduct business. This is important because foreign corporations needing to register in additional jurisdictions are subject to the same distinguishability requirements described in the preceding section.

In addition to using these state-specific search engines, we also typically recommend that founders run a general Google search for their proposed corporate names to see if any arguably similar names are already in use. While an overview of trademark basics can be [found here](#), it is important to remember that the distinctiveness of a "mark" (in this case, the corporate name) is directly related to the legal protectability of the mark – so, in an ideal scenario, a search for your proposed name should not turn up any relevant hits.

## Can I reserve a name if I already have one in mind?

Yes – most states permit founders to reserve a desired corporate name for their to-be-formed entity for a set period of time. The process typically involves filing a short reservation form and paying a nominal fee.

## What are "doing business as" (DBA) designations?

Often companies may want to do business under a different name than their formal corporate name. In this situation, many companies consider operating under a "doing business as" (DBA) or "fictitious name" in lieu of amending their legal names, which can be administratively more difficult.

There are a number of reasons that a company may want to explore operating under a DBA or fictitious name. For example,



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the company may find that its legal name is difficult for consumers to remember or it may believe that an alternative name better describes the company's products or services. Regardless of the underlying reason, applying to operate under a DBA or fictitious name is generally a straightforward process – typically requiring only a search of existing organizations to confirm the desired DBA or fictitious name is not already in use and filing an application with the relevant state authority along with a minor filing fee.

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