



## **If The Secretary of State Bounces Your Filing, Examine Your Purposes And Your Capitalization**

By Keith Paul Bishop on January 9, 2012

While I haven't taken a formal poll, I'm sure that many California corporate attorneys have had the unfortunate experience of having a filing "bounced" by the California [Secretary of State's](#) office. Rejections are most often due to some technical deficiency in the document being filed. If the document to be filed is in the proper form and properly executed, can the Secretary of State nevertheless refuse to file it?

Pursuant to legislation enacted last year, [AB 75](#) (Hill), the answer is now yes. This new law permits the Secretary of State to refuse a filing "based on a reasonable belief that the service or filing is being requested for an unlawful, false or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity". Government Code § 12181.

According to the bill's legislative history, the Secretary of State's office receives as many as 15 "bogus" filings per month. Apparently, these involve requests for [authentication](#) of notary public acknowledgements. Although the Secretary of State's authentication simply establishes that the notary public who acknowledged a document is a state-certified notary public, some people may request authentication for the purpose of giving an official status to the underlying document. The document may then be used in an attempt to negate income tax liability or harass government officials.

I recall that when I was in government service, we would receive a variety of pseudo-official documents from various anti-government groups. One, I recall, had the rather bizarre notion that the [National Conference of Commissioners on Uniform State Laws](#) was some sort of conspiracy to control the world.

While I understand the Secretary of State's concern with being a witting participant in these activities, the question arises how the Secretary of State will form a "reasonable belief" as to a filer's purposes. I suspect that in most cases, a request for authentication or other filing won't come with a statement saying what the requestor intends to do. Based on experience, the Secretary of State has

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identified some markers of potentially fraudulent filings. Some tax “defiers” do not capitalize the “u” in United States of America and others will insert punctuation marks in an individual’s name.

I’m also puzzled by the fact that the statute refers separately to “unlawful” and “illegitimate” purposes. Outside of the Family Code, the legislature hasn’t routinely used the term “illegitimate” in statutes. Generally and etymologically, “illegitimate” means not lawful (*il + legitimatus*). Thus, the use of both “unlawful” and “illegitimate” in the statute implies that the legislature had a different meaning in mind for the word “illegitimate”. Exactly what, however, the legislature did not say.

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