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Changing Your Name in New York—Part I

Gerald Lebovits



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IN THIS ISSUE

New Members.....	2
The Docket.....	3
Presidents Message	4
Board Listing.....	5
Editor's Note	6
Lawyers Assistance Committee	6
Culture Corner.....	7
Marital Quiz	9
Changing Your Name in NY.....	10
Vicious Propensities in Domestic Animals	11
S Corp Sales, Built-In Gain, and 2013	13
Photo Gallery	14



Changing Your Name in New York:

A Guide for Attorneys and the Self-Represented

By Gerald Lebovits and Taneem Kabir

We are not always happy with the names our parents give us. Because we like to identify ourselves to others in different ways and for different reasons, we have used aliases, a/k/a's, stage names, pseudonyms, monikers, nicknames, and pen names since the Year One. Our names are our labels. And as Proverbs 22:1 advises, "A good name is rather to be chosen than great riches"¹

This three-part article is designed to help lawyers and non-lawyers understand the rules and procedures surrounding how to get a new name in New York: the common-law way to change one's name; acquiring a name by filiation, adoption, marriage, and divorce; and the right to petition, or apply to, a court for leave to assume another name.

I. Common-Law Name Change

Changing your name in New York is easy. New York recognizes the common-law right to change your name without having to petition the state. If you are a movie star — or a fan of one — you can change your name whenever you wish. Just make the conscious decision to do so. Then consistently hold yourself out to the world using your new name while managing all your regular business and day-to-day affairs, including entering into contracts, using your new name.³ The only requirements are that you do this for a sufficiently long enough time and that using your new name does not result in fraud, confusion, or offense to common decency and good taste.⁴



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Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

Changing Your Name in New York: A Guide for Attorneys and the Self-Represented by Gerald Lebovits and Taneem Kabir Continued

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Changing your name under the common law is not entirely effective, though. If you want to put your new common-law name on your driver's license, learner's permit, or state identification, for example, you must satisfy the New York State Department of Motor Vehicle's points-based proof-of-identification system, which involves presenting a marriage certificate, divorce papers, or a court-ordered document as evidence of your new name¹ — an impossible feat without going through the petitioning process.

General Instructions for Petition Name Changes

For those who want to change their name by filing a petition instead of changing their name under the common-law method, the process in New York is fairly streamlined. Except in unusual circumstances, an attorney is unnecessary; New York courts make the name-change process user-friendly.

To identify published cases, we use in this article "Matter of" to specify who, or on behalf of whom, brought, or applied for, the petition. "Matter of" is how the official reporter series (Misc., A.D., and N.Y.) names cases. The unofficial reporter series (N.Y.S. and N.E.) uses "Application of"; the Bluebook uses "In re." New York petitions themselves use "In the Matter of the Application of"

Although you may petition for leave to change the name you were given at birth or which you took through marriage or divorce or at adoption,² only New York State residents may petition a New York court for a name change.³

The exact procedure to change your name depends on what type of petitioner you are, as well as when and where you file your petition for leave to assume another name. Thus, the requirements to change your own name are different than if you are petitioning on another person's behalf.

If you are petitioning the New York City Civil Court to change your own name, use Office of Court Administration (OCA) form CIV-GP-82A (Adult Petition). If you are petitioning to change your minor child's name use OCA form CIV-GP-82M (Minor Petition). If you are changing your name along with your spouse's and child's name, or both, use OCA form CIV-GP-82F (Family Petition). Supreme Court name-change forms do not have OCA codes.

All Civil Court and Supreme Court name-change petitions forms are available online at the New York State Unified Court System's CourtHelp Website.⁴ If you are filing a name-change petition for yourself in Supreme Court or are

filing a name-change petition for yourself or your minor child in Civil Court, you may create those petition forms through the court system's interactive do-it-yourself (DIY) computer program on the CourtHelp Website.⁵

Name Change and Immigration/Naturalization Issues

If you are an applicant immigrating to the United States and wish to change your name upon becoming a U.S. citizen, there are two ways to accomplish this through the United States Citizenship and Immigration Services (USCIS).⁶ One way is to file a petition for leave to assume another name in your local Supreme Court, if you live outside New York City, or in the New York City Civil Court, if you are a New York City resident. (Outside New York City, you may petition the County Court. But that method, although authorized by Civil Rights Law § 60, might no longer be effective; every County Court clerk's office the authors contacted directed us to the local Supreme Court.) Once the court issues you a name-change order, you must present the order to the USCIS before you take your naturalization oath.⁷ The USCIS will also accept a marriage certificate or divorce decree issued by a state court as proof of your name change.

The other way is to ask the court in which you, as a petitioner, are taking your naturalization oath to allow your name change. The federal judge (district or immigration judge) or officer who administers your oath will issue, or direct the court clerk to issue, your Certificate of Naturalization with your new name.⁸

If you wish to change your name after you take the naturalization oath and after becoming naturalized and want your official naturalization documents to reflect that change, you must present to the USCIS (1) a marriage certificate, a divorce decree, or a state-court order reflecting your new name and (2) a duly executed Form N-565: Application for Replacement Naturalization/Citizenship Document. Because the U.S. Congress did not explicitly give the USCIS the authority to change your name, presenting these two items is the only way the USCIS can recognize your new name and issue you a replacement copy of your Declaration of Intention, Certificate of Naturalization, Certificate of Citizenship, or Repatriation of Citizenship.⁹

The process is similar if you want your passport to reflect your new name. The U.S. Department of State will recognize a name change for purposes of issuing you a U.S. passport if you submit to the Department of State's Bureau of Consular Affairs any of the following items: (1) a state- or federal-court order reflecting your new name after you successfully petitioned for it; (2) a divorce decree declaring your return to your former name; (3) a Certificate of Naturalization issued with your new name; (4) a marriage certificate issued with your new name; or (5) a state- or federal-government-issued legal document, such as a driver's license or military identification card, issued with your new name.¹⁰

Things become complicated if you do not have any of these items — that is, if you adopted your new name under the common law — but still wish to receive a passport with your new name on it. You must then submit evidence of public and exclusive use of the adopted name for a long period of time, generally five years.¹¹ This evidence must include three or more public documents, such as a tax return or voter-registration statement, including one state or federal-government-issued identification that has your photograph on it.¹²

Name Change Through Marriage and Divorce

Under Civil Rights Law § 65, “Any person may, upon marriage, elect to assume a new name.”¹³

If you recently got married or will soon be, either you or your prospective spouse may elect to change your surname by entering the new surname in the appropriate space on the marriage-license application.¹⁴ You cannot change your first or middle name through marriage; you may change only your surname. Your new surname must consist of any one of these four options: (1) either spouse’s last name; (2) any former last name of either spouse; (3) a last name that combines the two spouses’ original last names into one or into a segment of the original last names; or (4) a combination last name combined by a hyphen, provided that each part of that combination last name is the pre-marriage surname, or any former last name, of each spouse.¹⁵ Your new surname takes effect upon the completion of the marriage ceremony, and your marriage certificate constitutes proof that you may lawfully use your new surname.¹⁶

Your spouse may never change your last name for you without your consent. Nor may your spouse make changing your name a condition of marriage. New York Domestic Relations Law § 15 requires marriage-license-application forms to inform prospective spouses that neither of them is forced to change a name and that either prospective spouse may change his or her name if either desires to do so.¹⁷

If you changed your surname upon marriage and get divorced, you may resume using your pre-marriage surname or any other earlier surname.¹⁸ Under New York Domestic Relations Law § 240-a, divorce decrees must include a provision that allows divorcés and divorcées to resume using their pre-marriage surname.¹⁹ This provision in a divorce decree has the same effect as a name-change order.

1 The Holy Bible, King James Version.

2 N.Y. Civ. Rights Law § 65(4) provides that “[n]othing in this article shall be construed to abrogate or alter the common law right of every person . . . to retain his or her name or to assume a new one so long as the new name is used consistently and without intent to defraud.” See also *Lana v. Brennan*, 124 N.Y.S.2d 136, 137 (Sup. Ct. 7N.Y. County 1953) (“[A] man may lawfully change his name at will without legal proceedings of any sort. . . . This right is not affected by the statute whereby a change of name is authorized by judicial proceedings.”).

3 *Smith v. U.S. Casualty Co.*, 197 N.Y. 420, 428-29, 90 N.E. 947, 950 (N.Y. 1910) (“At common law a man may lawfully change his name, or by general usage or habit acquire another name than that originally borne by him, and this without the intervention of either the sovereign, the courts, or Parliament; and the common law, unless changed by statute, of course, obtains in the United States.”) (quoting 21 Am. & Eng. Encycl. of Law 311 (2d ed.)). For a general overview of the common-law right to change one’s name, see Julia Shear Kushner, *The Right to Control One’s Name*, 57 UCLA L. Rev. 313, 324-28 (2009).

4 See, e.g., *Matter of Halligan*, 46 A.D.2d 170, 171, 361 N.Y.S.2d 458, 459 (4th Dep’t 1974) (“Under the common law a person may change his or her name at will so long as there is no fraud, misrepresentation or interference with the rights of others.”); *Matter of Rivera*, 165 Misc. 2d 307, 311, 627 N.Y.S.2d 241, 244 (Civ. Ct. Bronx County 1995) (“[P]etitioner has the right at common law to adopt any name so long as fraud or misrepresentation is nonexistent . . .”). For a more detailed discussion of the requirement against confusion, fraud, and offense, see Kushner, *supra* note 3, at 316-17 & 332.

5 N.Y. St. Dep't of Motor Vehicles, Change Your Address or Your Name, <http://www.dmv.ny.gov/addr-name.htm> (last visited July 17, 2013).

6 N.Y. Court Help, Name Changes, <http://www.nycourts.gov/courthelp/namechangeinfo.html> (last visited July 17, 2013).

7 N.Y. Civ. Rights Law § 60, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec60> (last visited July 17, 2013).

8 N.Y. Court Help, Name Changes, <http://www.nycourts.gov/courthelp/namechangeinfo.html> (last visited July 17, 2013).

9 N.Y. CourtHelp, Name Change DIY Forms, <http://www.nycourts.gov/courthelp/namechangeinfo.html#Q4> (last visited July 17, 2013).

10 A Guide to Naturalization, Frequently Asked Questions, <http://www.uscis.gov/files/article/chapter3.pdf> (last visited July 17, 2013).

11 Id.

12 8 U.S.C. § 1447(e), available at <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-10299.html> (last visited July 10, 2013) (“It shall be lawful at the time and as a part of the administration by a court of the oath of allegiance under section 337(a) [8 U.S.C. § 1448(a)], for the court, in its discretion, upon the bona fide prayer of the applicant included in an appropriate petition to the court, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.”).

13 Dep't of Homeland Security, Instructions for Form N-565, Application for Replacement Naturalization/Citizenship Document, <http://www.uscis.gov/files/form/n-565instr.pdf> (last visited July 17, 2013).

14 22 C.F.R. 51.25, available at <http://www.uscis.gov/ilink/docView/22CFR/HTML/22CFR/0-0-0-1/0-0-0-2898/0-0-0-3133.html> (last visited July 17, 2013).

15 Id.

16 Id.

17 N.Y. Civ. Rights Law § 65, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec65> (last visited July 17, 2013).

18 Office of the City Clerk, Marriage Bureau, Name Change Options, http://www.cityclerk.nyc.gov/html/marriage/name_change.shtml (last visited July 17, 2013).

19 Id.

20 Id. (City Clerk).

21 N.Y. Dom. Rel. Law § 15(1)(b), available at http://www.cityclerk.nyc.gov/html/marriage/domestic_relations.shtml (last visited July 17, 2013); Elizabeth F. Emens, Changing Name Changing: Framing Rules and the Future of Marital Names, 74 U. Chi. L. Rev. 761, 765, 856 (2007), available at http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74_3_Emens.pdf (last visited July 17, 2013).

22 N.Y. Dom. Rel. Law § 240-a.

23 For an example of that, see *Brody v. Brody*, 98 Misc. 2d 560, 560, 414 N.Y.S.2d 285, 285 (Sup. Ct. Orange County 1979) (“The provisions of § 240-a of the Domestic Relations Law provide for a mandatory decretal paragraph authorizing the former wife to resume the use of her maiden name if she desires . . .”).