The Kentucky Business Entity Filing Act: The Next Step Forward in the Rationalization of Business Entity Law

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Under Kentucky law there may be organized numerous forms of business organization including the business corporation,[1] the nonprofit corporation,[2] the general partnership,[3] the limited partnership,[4] the limited

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1 KRS ch. 271B.

2 KRS ch. 273.

3 Under Kentucky law, from on or after July 12, 2006, a general partnership may be organized only under the Kentucky Revised Uniform Partnership Act (2006) ("KyRUPA"), set forth at KRS ch. 362.1. *See* KY. REV. STAT. ANN. § 362.1-1204(1)(a). General partnerships organized under the Kentucky Uniform Partnership Act (KRS §§ 362.150 through 362.360) ("KyUPA"), absent an election to be governed by the Kentucky Revised Uniform Partnership Act (2006), remain governed by that earlier act.

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liability company,[5] the business trust,[6] the cooperative corporation,[7] the cooperative association,[8] the rural electric cooperative,[9] the rural telephone cooperative[10] and the professional service corporation.[11] If different forms of business organization are understood to be standardized contracts, each subject to a greater or lesser degree to modification by private ordering by which different arrangements inter-se the business organization and between the business organization and third parties are arranged, then there is benefit in having a robust menu of options. Still, there exists no benefit when there are nonsensical distinctions in and between the various acts. In recent years efforts have been undertaken, on a section by section basis, to reduce the degree of inconsistency between the various acts, especially inconsistencies that have arisen not out of issues of policy but rather as the accidents of drafting.[12]

KY. REV. STAT. ANN. §§ 362.1-1204(1)(b), (2). *See also* Allan W. Vestal and Thomas E. Rutledge, *Modern Partnership Law Comes to Kentucky: Comparing the Kentucky Revised Uniform Partnership Act and the Uniform Act From Which it was Derived*, 95 KY. L.J. 715, 717-18 (2007) (hereinafter "Vestal and Rutledge, *Modern Partnership Law Comes to Kentucky*").

4 Under Kentucky law, from on or after July 12, 2006, a limited partnership may be organized only under the Kentucky Uniform Limited Partnership Act (2006) ("KyULPA"), set forth at KRS ch. 362.2. *See* KY. REV. STAT. ANN. § 362.2-1205(1)(a). Limited partnerships organized under the Kentucky Revised Uniform Limited Partnership Act (KRS §§ 362.401 through 362.546) ("KyRULPA") or its predecessor act, absent an election to be governed by the Kentucky Uniform Limited Partnership Act (2006), remain governed by that earlier act. KY. REV. STAT. ANN. § 362.2-1204. *See also* Allan W. Vestal and Thomas E. Rutledge, *The Uniform Limited Partnership Act (2001) Comes to Kentucky: An Owner's Manual*, 34 N. KY. L. REV. 411, 414-16 (2007) (hereinafter "Vestal and Rutledge, *The Uniform Limited Partnership Act*").

5 KRS ch. 275.

6 KRS ch. 386.

7 KRS ch. 272.

8 KRS ch. 272.

9 KRS ch. 279.

10 KRS ch. 279.

11 KRS ch. 274.

12 *See* Thomas E. Rutledge, *The 2007 Amendments to the Business Entity Statutes*, 97 KY. L.J. 229, 231-33 (2008-09) (hereinafter "Rutledge, *The 2007 Amendments*"); *see*

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Still, there remains an insufficient level of irrationality and inconsistency across business organization statutes. Practitioners have increased transaction costs that are passed on to the client, in the need to specifically review the statutory provisions on an entity by entity basis to avoid confusion and error. Those transaction costs can be significantly reduced by having, to the degree possible, a single consistent rule applying across all forms of business organization. Second, the personnel in the Secretary of State's office must remember and assess compliance with a myriad of nonsensical rules. A single series of rules will increase the efficiency of the Secretary of State's office and the functionality of on-line filing and processing systems.

To that end, the Kentucky Business Entity Filing Act (hereinafter "BEFA") seeks to centralize Secretary of State filing rules that are either the same or substantially the same across the various forms of business organization. This has been accomplished by (a) preparing a common set of provisions that apply across all business organizations, (b) removing from the various business organization acts substantive provisions dealing with those issues now addressed in the business entity filing act and (c) making the filings performed by the various forms of business organizations subject to the BEFA. Graphically, we achieve the following structure:

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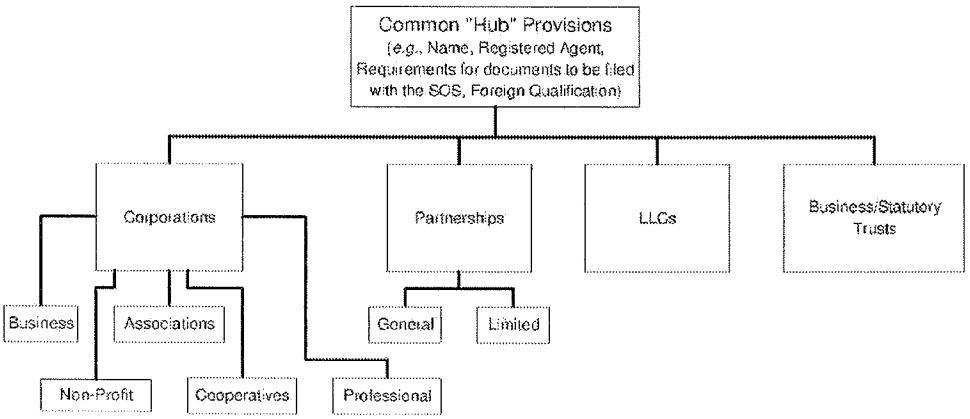
also Maryellen B. Allen and Thomas E. Rutledge, *The 2006 Amendments to the Assumed Name Statute: The Ongoing Task of Modernization and Clarification*, 70 BENCH AND BAR 62 (May, 2006) (hereinafter "Allen & Rutledge, *2006 Amendments to the Assumed Name Statute*"). In 2010 these efforts were continued, for example by conforming the charging order provisions of the partnership, limited partnership and LLC Acts. *See* KY. REV. STAT. ANN §§ 275.260; 362.285; 362.481; 362.1-504; and 362.2-703, as amended by, respectively, 2010 Acts, ch. 133, §§ 35, 49, 50, 56 and 63.



As a general rule, the BEFA did not aim to substantively change business organization law. For example, each form of business organization has a different set of procedures that are employed with respect to the amendment of such entity's initial organizational filing with the Secretary of State's office.[13] These various requirements regarding amendment of the organizational filing have not been altered. Conversely, certain attestation and sealing requirements that exist in some business organizations and not in others and which impose nonsensical policing obligations on the Secretary of State's office have been deleted.[14] Still, certain practices that were previously applied across nearly all, but not all, business organizations have not, by reason of the Kentucky Business Entity Filing Act, been universally applied. For example, neither a Rural

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[13] For example, in a business corporation, an amendment to the articles of incorporation must, in most instances, have received the approval of both the board of directors and the shareholders, whereupon articles of amendment are delivered to the Secretary of State for filing. KY. REV. STAT. ANN. § 271B.10-030(2). Articles of amendment to the articles or organization of an LLC need be approved only by the members of the LLC. KY. REV. STAT. ANN. § 275.030(2). Conversely, in the case of a Rural Electric Corporation, while the substance of the amendments to the articles of incorporation must be approved by both the board of directors and the members, there exist attestation requirements with respect to the articles of amendment as filed with the Secretary of State's office. *See* KY. REV. STAT. ANN. § 279.050. Similar attestation requirements, with the requirement as well that the corporate seal be affixed to the articles of amendment, apply in the case of rural telephone cooperatives. KY. REV. STAT. ANN. § 279.410.

[14] *See, e.g.*, *infra* note 120.

Electric Cooperative nor a Rural Telephone Cooperative has been required to maintain a registered office or agent,[15] and no such requirement has been added,[16] but an annual report obligation will now apply to limited partnerships governed by the Kentucky Revised Uniform Partnership Act.[17] To that end, in addition to a series of general provisions,[18] BEFA addresses:

- filing requirements with respect to documents filed by or issued by the Secretary of State;[19]
- business entity names;[20]
- the registered office and registered agent;[21]
- changes in the principal place of business;[22]
- annual reports;[23]
- administrative dissolution;[24]

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15 *See* KY. REV. STAT. ANN. § 279.030(1) (articles of incorporation of Rural Electric Cooperative need not set forth either a registered office or registered agent); *id.* § 279.330 (articles of incorporation of Rural Telephone Cooperative need not set forth either registered office or registered agent).

16 None of rural electric cooperatives, rural telephone cooperatives nor limited partnerships governed by the Kentucky Revised Uniform Limited Partnership Act are obligated to file an annual report.

17 *See infra* notes 154 through 158 and accompanying text.

18 *See infra* notes 34 through 45 and accompanying text.

19 *See infra* notes 48 through 93 and accompanying text.

20 *See infra* notes 94 through 119 and accompanying text.

21 *See infra* notes 120 through 142 and accompanying text.

22 *See infra* notes 143 through 151 and accompanying text.

23 *See infra* notes 152 through 168 and accompanying text.

24 *See infra* notes 169 through 178 and accompanying text.

- the expiration of the term of business entities that are not perpetual;[25] and

- qualification of foreign entities to transact business in Kentucky.[26]

Conforming amendments within the various business entity laws and elsewise have also been made.[27]

The "Burden" of Cross-Referencing

Some practitioners may have an initial objection to cross-referencing a distinct statute when working within a particular business organization act, fearing that the need to flip back and forth between the two will lead to confusion. Such concerns are overblown and will be quickly remedied by reviewing both the business entity act and the revised business organization act under consideration. While many of the substantive provisions of the various business organization acts have been deleted, an example being those governing the registered office and registered agent, there have been substituted within the organic acts cross-references to the provisions of the business entity filing acts addressing registered offices and registered agents.[28] Each of these provisions will serve as a (friendly) reminder of the need to reference BEFA. Further, as BEFA sets forth consistent rules across all business organizations for the subject matters it addresses, the drafting of those new acts will be able to focus exclusively on the substantive provisions entailing policy decisions. Furthermore, if one steps away from the predominant acts, namely those governing the business corporation and the LLC and reviews the range of the lesser

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25 *See infra* notes 179 through 184 and accompanying text.

26 *See infra* notes 185 through 214 and accompanying text.

27 The bulk of the legislation containing the filing act was comprised of those conforming amendments. While the filing act was comprised of 48 substantive provisions, 102 other sections amended existing statutes, and 144 other statutes were entirely deleted. Set forth as Exhibits A, B and C are cross-reference tables of the pre-BEFA laws of business corporations, LLCs and KyRUPA/KyULPA partnerships deleted in S.B. 151 to the superseding provisions of BEFA.

28 *See, e.g.*, KY. REV. STAT. ANN § 271B.5-010 as amended by 2010 Acts, ch. 151, § 55; *id.* § 275.115 as amended by 2010 Acts, ch. 151, § 77.

applied acts, it is clear that cross referencing between statutes is quite common. For example, every professional service corporation, except to the extent provided in the Professional Service Corporation Act, is governed by the Business Corporation Act.[29] Provisions from the Business Corporation Act addressing service on a foreign corporation and the withdrawal from transacting business in Kentucky are expressly incorporated by reference in the Nonprofit Corporation Act.[30] Cooperative corporations and associations are governed by, except to the extent set forth in their organic acts, either the Business Corporation Act or the Nonprofit Corporation Act.[31] Irrespective of any express cross-incorporation, individual business entity acts do place limitations upon other forms of business organizations. For example, "cooperative" may not be used in the name of any business organization not governed by the Cooperative Corporation Act[32] even though that limitation does not appear in any of the Business Corporation, Nonprofit Corporation, Partnership, Limited Partnership, or Limited Liability Company Acts. A central filing provision such as the BEFA is not, therefore, entirely an innovation in Kentucky business entity law.

Legislative History and Codification

The Kentucky Business Entity Filing Act was submitted to the 2010 Kentucky General Assembly by Senator Tom Jensen on February 8, 2010 as S.B. 151. The bill was assigned to the Judiciary Committee on February 10.[33] The Judiciary Committee held a hearing on the proposal on February 11, and the bill was passed out of committee on a unanimous vote. S.B. 151 was voted out of the Senate on February 24 on a vote of 38 to 0. The proposal came before the House Judiciary Committee on March

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29 KY. REV. STAT. ANN. § 274.015(2).

30 KY. REV. STAT. ANN. § 273.363.

31 KY. REV. STAT. ANN. § 272.042.

32 KY. REV. STAT. ANN. § 272.050.

33 Senator Jensen sponsored as well S.B. 150 containing the 2010 amendments to the various business entity acts. *See generally* Thomas E. Rutledge, *The 2010 Amendments to the Kentucky's Business Entity Laws*, 38 N. KY. L. REV. [illegible] ([illegible]); Thomas E. Rutledge and Dean Dennis R. Honabach, *Kentucky Business Entity Laws: The 2010 Amendments*, 74 BENCH & BAR 6 (Sept. 2010).

10, and it was voted out of Committee on another unanimous vote. On March 23 the bill was voted out of the House by a vote of 96 in favor and 1 against. On March 29 the Senate concurred in the technical corrections made in the House, and then approved the bill on a vote of 36 in favor and zero against. The bill was signed by Governor Beshear on April 13, 2010.

The Kentucky Business Entity Filing Act is codified at KRS ch. 14A.

Effective Date

The Business Entity Filing Act has a delayed effective date of January 1, 2011.[34] The delayed effective date is intended to afford the Secretary of State time to update its procedures to accommodate the new act. This will include the preparation of new forms and the updating of old forms and their related instructions and as necessary, on-line filing procedures.[35] In addition, the delayed effective date will afford practitioners time to become comfortable with the new systems and procedures. The corresponding edits to the otherwise existing language of the business entity acts are likewise not effective until January 1, 2011.

The substantive provisions of the Kentucky Business Entity Filing Act will be reviewed substantially in the order codified. Thereafter, material impacts upon the various business entity forms are highlighted herein.

The Substantive Provisions of the Kentucky Business Entity Filing Act

1. General Provisions

The Kentucky Business Entity Filing Act[36] is applicable to each "entity" and "foreign entity."[37] As such its provisions apply irrespective

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34 *See* 2010 Acts, ch. 151, § 152.

35 For example, while there were previously four different forms, each type specific, for the qualification of various types of foreign entities (Forms FCO, FLC, FNP and FNT), there will now be a single application for a certificate of authority.

36 KY. REV. STAT. ANN § 14A.1-010, created by 2010 Acts, ch. 151, § 1.

of a cross-reference from the organic act.[38] The Secretary of State is vested with the powers "reasonably necessary" to perform the duties required by the filing act.[39]

A new series of provisions enable the Secretary of State to issue interrogatories to a domestic or foreign entity in order to ascertain compliance with the filing act. Penalties may be imposed on those failing to respond to interrogatories,[40] and the entity, if domestic, is then subject to administrative dissolution or, if foreign, to revocation of the certificate of authority for failure to respond.[41] These express provisions as to the ability of the Secretary of State to issue interrogatories and to compel the answering thereof supplement and implement, rather than supplant, the Secretary of State's general visitorial powers.

It is important to understand the appropriate scope and limitations of interrogatories from the Secretary of State. The Secretary of State is empowered to issue interrogatories for the purposes of insuring compliance with either BEFA or the applicable organic act as such relates to the interface of the entity with the Kentucky Secretary of State. As such, it would be appropriate for the Secretary of State to issue an interrogatory inquiring as to, (i) the principal place of business address of a limited liability company when it has reason to believe that the LLC in question has in fact moved from that address,[42] (ii) confirm the continuing validity of a mailing address provided by a foreign entity which has surrendered its certificate of authority when mail transmitted to that address is returned to the Secretary of State with the explanation that the

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37 KY. REV. STAT. ANN. § 14A.1-020, created by 2010 Acts, ch. 151, § 2. Both "entity" and "foreign entity" are defined terms. *See* KY. REV. STAT ANN. §§ 14A.1-070(7) and (10).

38 "Organic act" is a defined term (*see* KY. REV. STAT ANN. § 14A.1-035(19), created by 2010 Acts, ch. 151, § 7) and refers to the law pursuant to which an entity or foreign entity is organized.

39 KY. REV. STAT. ANN. § 14A.1-030, created by 2010 Acts, ch. 151, § 3.

40 *See* KY. REV. STAT. ANN. § 14A.1-050(2), created by 2010 Acts, ch. 151, § 5.

41 *See* KY. REV. STAT. ANN. § 14A.1-050(1), created by 2010 Acts, ch. 151, § 5.

42 *See* KY. REV. STAT. ANN. § 14A.1-030, created by 2010 Acts, ch. 151, § 3.

period of time for forwarding to the new address has expired[43] or (iii) upon receipt of a filing by a limited partnership signed by one who is identified as a general partner but who is not listed on the certificate of limited partnership.[44] Conversely, it would not be appropriate for the Secretary of State to issue an interrogatory seeking, in the case of a corporation, a list of its shareholders, or in the case of an LLC a copy of its operating agreement or other written record as to the agreed contributions of the members. While a corporation is required to maintain a list of its shareholders,[45] and an LLC is required to maintain a listing of the agreed contributions of its members,[46] neither concerns matters over which the Secretary of State has oversight responsibility and on that basis any interrogatory making these or similar inquiries would be inappropriate and validly resisted.[47]

2. Filing Requirements with Respect to Documents Filed by or Issued by the Secretary of State

A single provision reciting the physical requirements of a document delivered to the Secretary of State for filing replaces the various provisions in the various acts.[48] While the individual organic acts

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[43] *See* KY. REV. STAT. ANN. §§ 14A.9-060(2)(e), (f), created by 2010 Acts, ch. 151, § 45.

[44] *See* KY. REV. STAT. ANN. § 14A.1-020(c), created by 2010 Acts, ch. 151, § 9.

[45] *See* KY. REV. STAT. ANN. § 271B.7-200(1).

[46] *See* KY. REV. STAT. ANN. § 275.185(1)(e)(1).

[47] Whether, with the adoption of Federal legislation akin to the Incorporation Transparency and Law Enforcement Assistance Act (S.B. 569, introduced March 11, 2009), a listing of the owners, record or beneficial of a business entity will need to be made available upon interrogatories for the Secretary of State remains to be seen. *See also* Marcia Coyle, *Feds Want More Corporate Data*, NAT'L LAW JOURNAL 1 (Jan. 11, 2010). *See also* Thomas E. Rutledge, *Requiring Disclosure of Business Entity Ownership: Proposed New Laws are Burdensome, But With the Benefit of Being Ineffective,* 13 J. PASSTHROUGH ENTITIES 47 (July/Aug., 2010); J.W. Verret, *Terrorism, Finance, Business Associations and the "Incorporation Transparency Act"*, 70 LOUISIANA L. REV. 857 (Spring 2010).

[48] KY. REV. STAT. ANN. § 14A-2.010, created by 2010 Acts, ch. 151, § 8. *Accord* KY. REV. STAT. ANN. §§ 271B.1-200(i)-(ii); *id.* § 275.045; *id.* § 273.252; *id.* § 362.1-108; and *id.* § 362.2-121.

previously addressed who could sign documents delivered for filing,[49] those requirements are now set forth in a free-standing provision.[50]

A condition precedent to an effective filing is the payment to the Secretary of State of the applicable filing fee.[51] Previously it was provided by regulation that the Secretary of State may cancel a filing made for which the filing fee cannot be collected.[52] That right of cancellation, conditioned upon notice from the Secretary of State and opportunity for cure, is now set forth in the statute. The notice from the Secretary of State that the funds in satisfaction of the filing fee are not available may be sent via e-mail.[53] This provision provides statutory authority for the effect of, and presumably supersedes 303 KAR 1:050 which, in operative part provided that "an entity which pays for its filing fees by check which is later dishonored shall have its filing voided and removed from the records of the Secretary of State." However, the statute is likely broader in application than is the regulation that it is restricted by its terms to dishonored checks and, read narrowly, would not extend to, for example, fraudulent money orders or ultimately rejected credit card payments.

A new provision defines when a document is received (as contrasted with filed) by the Secretary of State,[54] a point that may be important if a document must be received or submitted, as contrasted with filed, by a particular date. What documents will be treated as "self-operative" will develop over time with advances in automation of the filing process.

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49 *See, e.g.*, KY. REV. STAT. ANN. § 271B.1-200(6); *id.* § 275.045(b).

50 *See* KY. REV. STAT. ANN. § 14A.2-020, created by 2010 Acts, ch. 151, § 9.

51 *See* KY. REV. STAT. ANN. § 14A.2-010(10), created by 2010 Acts, ch. 151, § 8. *Accord* KY. REV. STAT. ANN. § 271B.1-200(11); *id.* § 275.045(12); *id.* § 362.1-108(9); and *id.* § 362.2-121(13).

52 30 KAR 1:050.

53 KY. REV. STAT. ANN. § 14A.2-010(11), created by 2010 Acts, ch. 151, § 8; KY. REV. STAT. ANN. § 14A.2-100(5), created by 2010 Acts, ch. 151, § 17.

54 KY. REV. STAT. ANN. § 14A.2-010(11), created by 2010 Acts, ch. 151, § 8.

All communications from the Secretary of State may be done electronically,[55] and communications by mail will be regular postal mail to the principal office address.[56] It is expressly provided that an acknowledgement of filing or explanation as to why a document was not filed may be transmitted electronically.[57]

Other than for documents that are filed electronically with the Secretary of State, the Secretary of State may require that printed or typewritten documents be accompanied by up to two exact or conformed copies.[58] How many additional copies of a particular filing will be required will be determined by Secretary of State office practices and as deemed appropriate formal regulation. Notwithstanding the Business Entity Filing Act, articles of incorporation filed with respect to a rural electric cooperative are required to be executed in triplicate originals, all of which are filed with the Secretary of State,[59] while articles of incorporation filed with respect to a rural telephone cooperative require four executed originals be delivered to the Secretary of State.[60] With respect to statements filed to KyRUPA, the Secretary of State may require up to one exact or conformed copy.[61]

A document meeting the statutory requirements and delivered for filing will be filed by the Secretary of State,[62] which act is evidenced by the time and date of filing mark.[63] The filing of a document does not

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55 KY. REV. STAT. ANN. § 14A.2-010(12), created by 2010 Acts, ch. 151, § 8.

56 *Id.*

57 KY. REV. STAT. ANN. § 14A.2-100(5), created by 2010 Acts, ch. 151, § 17.

58 KY. REV. STAT. ANN. § 14A.2-010(9), created by 2010 Acts, ch. 151, § 9.

59 KY. REV. STAT. ANN. § 279.040(1).

60 KY. REV. STAT. ANN. § 279.350(1).

61 KY. REV. STAT. ANN. § 362-1.108(8).

62 KY. REV. STAT. ANN. § 14A.2-050(1). *Accord* KY. REV. STAT. ANN. § 271B.1-250; *id.* § 275-070; *id.* § 273.2524; *id.* § 362.1-111; and *id.* § 362.2-124. *See also* 30 KAR 1:020 (requiring that a corporation or LLC be in "good standing" in order for documents delivered to the Secretary of State to be filed).

63 KY. REV. STAT. ANN. § 14A.2-050(2); *id.* § 14A.2-035. *Accord* KY. REV. STAT. ANN. § 271B.1-260; *id.* § 273.2525; *id.* § 275.075; *id.* § 362.1-112; and *id.* § 362.2-124(5).

create a presumption as to its validity or the accuracy of the information set forth therein.[64] A refusal to file may be appealed by an action in Franklin Circuit Court.[65]

Documents delivered to the Secretary of State for filing shall be effective upon either filing by the Secretary of State or a delayed effective time and date as set forth in the document.[66] Note that, under this formula, a document containing a delayed effective time and date is filed even before it is effective.[67] Where there is provided a delayed effective date, but no effective time, it will be effective as of 5:00 p.m. in the prevailing time in Franklin County, Kentucky.[68] A delayed effective date may be no more than 90 days after the document is filed.[69] Certain of the predecessor statutes were silent, however with respect to how a document setting forth a delayed effective date in excess of 90 days after the date of filing would be treated. Under the Kentucky Business Entity Act, it is made clear that where a claimed delayed effective date is in excess of that maximum 90 day period, the effective date shall be advanced to the ninetieth day after filing.[70]

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64 KY. REV. STAT. ANN. § 14A.2-050(6)(c).

65 KY. REV. STAT. ANN. § 14A.2-055.

66 KY. REV. STAT. ANN. § 14A.2-070.

67 Under the formula employed in several of the prior acts, it was provided that a document with a delayed effective date but no effective time would be effective "at the close of business" on that delayed effective date. *See, e.g.,* KY. REV. STAT. ANN. § 271B.1-230(2); *id.* § 275.060(2); *id.* § 362.1-110(2); and *id.* § 362.2-120(2). It was not specified, however, from where it is determined when is the close of business; is it of the Secretary of States office, which as to filings closes at 4:30 p.m., or rather as of the close of business of the entity making the filing.

68 KY. REV. STAT. ANN. § 14A.2-070(2).

69 *See, e.g.*, KY. REV. STAT. ANN. § 271B.1-230(2); *id.* § 275.060(2); *id.* § 362.1-110(2); and *id.* § 362.2-120(2).

70 KY. REV. STAT. ANN. § 14A.2-070(2).

The Secretary of State may certify that a document is of record, but that certification does not extend to the accuracy of the information in the document.[71]

With respect to all filings made with the Secretary of State, a single provision addresses the consequences of a false filing. Across the board, this offense shall be a misdemeanor punishable by a fine of up to but not to exceed $100.[72] The penalty is applicable as to the person who signs a document (a) knowing it is false in a material respect and (b) intending that the document be delivered to the Secretary of State for filing. It bears noting that this penalty is applicable not only with respect to filings made on behalf of a business entity. For example, certain of the statements filed under the Kentucky Revised Uniform Partnership Act (2006)[73] are made not on behalf of the partnership but rather on behalf of the individual or person making the filing.[74]

A filed document may be corrected with the correction relating back to the date of the initial filing except as to persons who relied upon the error, in which instance the correction is effective only prospectively from the date of filing.[75]

An entirely new provision, one which has no antecedent in Kentucky business entity law, will permit the withdrawal of filings made with the Kentucky Secretary of State having a delayed effective time or date.[76] Before the time that the filing in question takes effect, the parties thereto may deliver to the Secretary of State a statement of withdrawal.[77] Having been withdrawn, the filing will never become effective and shall

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[71] KY. REV. STAT. ANN. § 14A.2-060. *Accord* KY. REV. STAT. ANN. § 271B.1-270; *id.* § 273.2526; *id.* § 275.080; *id.* § 362.1-113; and *id.* § 362.2-125.

[72] KY. REV. STAT. ANN. § 14A.2-030(2), created by 2010 Acts, ch. 151, § 10.

[73] *See* KY. REV. STAT. ANN. § 362.1-1202.

[74] *See* KY. REV. STAT. ANN. § 362.1-304 (statement of denial filed by one who seeks to deny that they are a partner in a partnership).

[75] KY. REV. STAT. ANN. § 14A2-090. *Accord* KY. REV. STAT. ANN. § 271B.1-240; *id.* § 273.2523; *id.* § 275.065; and *id.* § 362.2-207.

[76] *See* KY. REV. STAT. ANN. § 14A.2-080, created by 2010 Acts, ch. 151, § 15.

[77] *See* KY. REV. STAT. ANN. § 14A.2-080(2), created by 2010 Acts, ch. 151, § 15.

be null and void. The filing fee for a statement of withdrawal is equal to that for the filing being withdrawn. A statement of withdrawal may not be filed once a document becomes effective.[78]

The Secretary of State is authorized to create certain forms and has the authority to make the use of those forms mandatory.[79] Other forms may be prepared and made available, but their use may not be made mandatory.[80]

With respect to most domestic entities, the Secretary of State may issue a certificate of existence.[81] Exceptions are made for general partnerships, limited partnerships not governed by the Kentucky Uniform Limited Partnership Act and business trusts, any of which may cease to exist without a filing to that effect with the Secretary of State.[82] A certificate of existence may be relied upon as "conclusive evidence" that the entity in question, as of the date and time of the certificate, exists.[83] A certificate of authorization may be issued for a foreign entity that is

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78 *See* KY. REV. STAT. ANN. § 14A.2-080(1) ("may withdraw the filing *before it takes effect*") (*emphasis* added).

79 KY. REV. STAT. ANN. §§ 14A.2-050(1), (2). *Accord* KY. REV. STAT. ANN. § 271B.1-210; *id.* § 273.2521; *id.* § 275.050; and *id.* § 362.2-119.

80 KY. REV. STAT. ANN. § 14A.2-050(3). *Accord* KY. REV. STAT. ANN. § 271B.1-210(2); *id.* § 273.2521(2); *id.* § 275.050(3); and *id.* § 362.2-119(3).

81 KY. REV. STAT. ANN. § 14A.2-130, created by 2010 Acts, ch. 151, § 20.

82 KY. REV. STAT. ANN. § 14A.2-130(4), created by 2010 Acts, ch. 151, § 20.

83 KY. REV. STAT. ANN. § 14A.2-130(3), created by 2010 Acts, ch. 151, § 20. *Accord* KY. REV. STAT. ANN. § 271B.1-280; *id.* § 273.2527; *id.* § 275.085; and *id.* § 362.2-207. *See also* DONALD W. GLAZER, SCOTT FITZGIBBON AND STEVEN O. WEISE, FITZGIBBON AND GLAZER ON LEGAL OPINIONS § 6.2.2 (3rd Ed. 2008); M. JOHN STERBA, JR., LEGAL OPINION LETTERS: A COMPREHENSIVE GUIDE TO OPINION LETTER PRACTICE (3rd Ed. Aspen Publishers); § 6.1.4 ("Because opinion preparers customarily do nothing more than rely on certificates of government officials (which normally are presented at closing), good standing opinions usually add little of value analytically. However, good standing opinions do provide comfort that the opinion preparers do not know the certificates to be unreliable and do place on them the responsibility for confirming that appropriate certificates have been obtained from the proper officials. In situations in which the benefits of good standing opinions are marginal, the Committee believes that the opinion process could be streamlined if opinion recipients were to refrain from requesting them and relied on the certificates alone.")

qualified to transact business in Kentucky, which certificate is conclusive evidence of that authority.[84] A certificate of authorization is not available for foreign general partnerships or certain foreign telephone or electric cooperatives.[85] The Secretary of State may issue other certificates restricted to documents of record and not attesting to the accuracy of the information contained therein.[86]

There has been centralized in a single provision the requirement that certain documents filed by business entities be recorded as well with the county clerk. Unlike the prior statutes, which were ambiguous as to what documents needed to be filed with the county clerk, the new law provides an exclusive listing of documents subject to filing, namely:

- articles of incorporation and all amendments thereto;[87]
- articles of organization and all amendments thereto

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[84] KY. REV. STAT. ANN. § 14A.2-140, created by 2010 Acts, ch. 151, § 21. *See also* FITZGIBBON AND GLAZER ON LEGAL OPINIONS, *supra* note 83 § 7.1.3; ABA Opinion Guidelines § I(c)(2); M. JOHN STERBA, JR., LEGAL OPINION LETTERS: A COMPREHENSIVE GUIDE TO OPINION LETTER PRACTICE (3rd Ed. Aspen Publishers); § 4.1.6 at p.6-74 ("Because opinion preparers customarily base foreign qualification and foreign good standing opinions solely on certificates of government officials, which normally are presented at closing, those opinions add little (if anything) of value other than confirming that the opinion preparers do not know the certificates on which the opinions are based to be unreliable. The Committee believes that the opinion process could be streamlined without any meaningful detriment to opinion recipients if absent special circumstances the practice of rending foreign qualification and foreign good standing opinions were discontinued and opinion recipients were to rely directly on the certificates themselves.")

[85] KRS § 14A.2-140(4). For a foreign limited liability partnership that has filed a statement of foreign qualification (*see* KY. REV. STAT. ANN. § 362.1-1102), a certified copy of that statement may be issued. If a foreign rural electric or telephone cooperative does apply for a certificate of authority (*see* KY. REV. STAT. ANN. § 14A.9-030), a certificate of authorization may be issued.

[86] KY. REV. STAT ANN. § 14A.2-150, created by 2010 Acts, ch. 151, § 22.

[87] This provision will address the articles of a business or nonprofit corporation, of a professional service corporation, of an agricultural cooperative association, and of a rural telephone or rural elective cooperative.

- certificates of limited partnership and all amendments thereto;[88]
- applications for certificate of authority;
- amendments to a certificate of authority;
- withdrawals of a certificate of authority;
- articles of merger;
- any statement of change of principal office address; and
- statements of change of registered agent or registered office or both.[89]

As a point of clarity, it is made clear that annual reports do not have to be filed with the county.[90] While it is the general rule that county-level filings are done in the county in which the entity maintains its registered office address, in that neither rural telephone nor rural electric cooperatives are obligated to maintain a registered agent, it is provided that they need to file articles of incorporation, amendments thereto, and any articles of merger to which they are a party with the county clerk for that in which the principal office address is maintained.[91] A corresponding revision to KRS section 64.012(2) has been made in order to provide consistency between the two provisions.[92] In accordance with

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88 This provision includes certificates and amendments thereto under the Kentucky Limited Partnership Act (2006) (KY. REV. STAT. ANN. ch. 362.2), the Kentucky Revised Uniform Limited Partnership Act (KY. REV. STAT. ANN. §§ 362.401 through 362.525), under the 1970 adoption of the Uniform Limited Partnership Act (repealed by 1988 Acts, ch. 284, § 65) and under predecessor law. Before 1970, a limited partnership was formed by a county clerk, and not a Secretary of State, filing. *See* KY. REV. STAT. ANN. § 362.030, repealed 1970 Acts, ch. 97, § 31.

89 KY. REV. STAT. ANN. § 14A.2-020(1)(a) through (i).

90 KY. REV. STAT. ANN § 14A.2-020(3).

91 KY. REV. STAT. ANN. § 14A.2-40(2).

92 *See* KY. REV. STAT. ANN. § 64.012(2), as amended by 2010 Acts, ch. 151, § 49.

prior law,[93] a document filed by the Secretary of State is effective irrespective of any failure to file same with the county clerk.

3. Names of Business Entities

The various requirements as to the names of both domestic and foreign entities have all been compiled into a single section.[94] Nonsubstantive changes have been made with respect to what names are and are not permissible and the required designators. An entity's real name must be distinguishable from any name of record with the Secretary of State; "name of record with the Secretary of State" is a defined term.[95] The capacity of a professional regulatory board to set forth additional requirements as to names is expressly preserved.[96] It remains the law that there are no required identifiers for limited partnerships organized under the 1970 adoption of the Uniform Limited Partnership Act or any predecessor law.[97] Consistent with prior law,[98] while the filing of a particular name will preclude the filing of any name that is not distinguishable upon the records of the Secretary of State, the filing does not of itself automatically preclude others from using that name or protect it from use by other persons.[99] Rather, with respect to efforts to achieve intellectual property protection with respect to a particular name, it will be necessary that appropriate trademark, copyright, service mark or other filings be made.[100] It should be noted that certain terminology, when used in business entity names, may implicate other statutes. For example, any of the use of "Bank," "Banker," "Banking" or "Trust" implicate review by

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93 *See, e.g.*, KY. REV. STAT. ANN. § 271B.1-230(3); *id.* § 275.060(3); *id.* § 362.1-110(3); and *id.* § 362.2-120(3).

94 *See* KY. REV. STAT. ANN. § 14A.3-010, created by 2010 Acts, ch. 151, § 23.

95 *See* KY. REV. STAT. ANN. § 14A.1-070(17), created by 2010 Acts, ch. 151, § 7.

96 KY. REV. STAT. ANN. § 14A.3-010(21), created by 2010 Acts, ch. 151, § 23.

97 KY. REV. STAT. ANN. § 14A.3-010(10).

98 *See* KY. REV. STAT. ANN. § 271B.4-010(6); *id.* § 275.100(6); and *id.* § 362.2-108(7).

99 KY. REV. STAT. ANN. § 14A.1-010(17).

100 *See also* Allen and Rutledge, *2006 Amendments to the Assumed Name Statute*, *supra* note 12 at 63

the Department of Financial Institutions,[101] while "Engineer," "Engineering," "Surveyor," "Surveying" or "Land Surveying" implicate review by the State Board of Licensure for Professional Engineers and Land Surveyors.[102]

Names may be reserved on behalf of a domestic or a foreign entity provided the name to be reserved is distinguishable upon the records of the Secretary of State.[103] A reserved name must contain the appropriate identifier for the entity or foreign entity on whose behalf it is reserved.[104] A reserved name may be transferred by its holder upon appropriate notice to the Secretary of State.[105] Unless sooner cancelled,[106] a name reservation is effective for 120 days and may, in the 30 days prior to the expiration, be extended for an additional 120 days from its otherwise applicable date of expiration.[107] The ability to renew a reserved name is consistent with changes made in 2007; prior to then, reserved names were not renewable.[108] A foreign entity desiring to reserve a name is not obligated to be qualified to transact business.[109]

A foreign entity may register its real name, if necessary modified in order to satisfy the requirement as to an appropriate identifier, and provided the name is otherwise distinguishable upon the records of the Secretary of State.[110] The statute sets forth the requirements as to the application to register a name;[111] there is no provision in the statute

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101 *See* KY. REV. STAT. ANN § 286.2-685.

102 *See* KY. REV. STAT. ANN § 322.060.

103 KY. REV. STAT. ANN. § 14A.3-010(10), created by 2010 Acts, ch. 151, § 24.

104 KY. REV. STAT. ANN. § 14A.3-020(2).

105 KY. REV. STAT. ANN. § 14A.3-020(3).

106 KY. REV. STAT. ANN. § 14A.3-020(4).

107 KY. REV. STAT. ANN. § 14A.3-020(1).

108 *See also* Rutledge, *The 2007 Amendments*, *supra* note 12 at, 232.

109 KY. REV. STAT. ANN. § 14A.3-020(5).

110 KY. REV. STAT. ANN. § 14A.3-030, created by 2010 Acts, ch. 151, § 25.

111 KY. REV. STAT. ANN. § 14A.3-030(2).

directing the Secretary of State to issue a form for this filing.[112] All name reservations expire on the January 1 following the filing date, and are renewable at any time between October 1 and December 31.[113]

A foreign entity desiring to qualify to transact business is held to the same standards as to name distinquishability and required identifiers as apply to domestic entities. Where the real name of a foreign entity does not meet those requirements, the foreign entity may either supplement its name with a required identifier or adopt a fictitious name pursuant to which it will transact business in Kentucky.[114] If a foreign entity qualified to transact business in Kentucky changes its real name in its jurisdiction of organization[115] and that new name is not distinguishable upon the records of the Kentucky Secretary of State, the foreign entity will need to register a fictitious name pursuant to which it will transact business in Kentucky.

There has been added an explicit cross-reference to the assumed name statute for all domestic business entities transacting business other than under their real names, and all foreign entities transacting business either under their real or fictitious name.[116] The assumed name statute has not, in response to the Business Entity Filing Act, been amended. The definition of what constitutes the real name of a business organization for purposes of the assumed name statute are unaltered, and the filing fees to be paid to the Kentucky Secretary of State for assumed name filings continue to be governed as before[117] as does the county-level filing.[118] While, in the course of drafting the Business Entity Filing Act, consideration was given to incorporating therein the assumed name statute, such a change was rejected for a pair of reasons. Initially, the

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112 KY. REV. STAT. ANN. § 14A.2-050(1).

113 KY. REV. STAT. ANN. § 14A.3-030(4).

114 *See* KY. REV. STAT. ANN. § 14A.3-040, created by 2010 Acts, ch. 151, § 26.

115 Upon such a change of name in the jurisdiction of organization, the foreign entity will be required to amend its certificate of authority. *See* KY. REV. STAT. ANN. § 14A.9-040, created by 2010 Acts, ch. 151, § 43.

116 KY. REV. STAT. ANN. § 14A.3-050, created by 2010 Acts, ch. 151, § 27.

117 KY. REV. STAT. ANN. § 365.015(11).

118 *See* KY. REV. STAT. ANN. § 365.015(11); *id.* § 64.012(1)(a)(16).

assumed name act has application to sole proprietorships, as well as other entities, and as sole proprietorships fall out of the otherwise applicable scope of the Business Entity Filing Act, it seemed that the incorporation would in itself be confusing. Further, as the assumed name statute is a consumer protection provision,[119] it was thought best to leave it as a freestanding provision with the balance of chapter 365 so as to avoid any implication that the assumed name statute is, on a going-forward basis, meant to be construed for purposes other than for consumer protection.

4. The Registered Office and Agent

With certain exceptions, every domestic and every foreign entity qualified to transact business in Kentucky is obligated to maintain a registered office and agent.[120] As noted previously, inconsistent rules have been applied across the various business entity acts with respect as to what forms of business organization could or could not serve as the registered agent of a particular form of organization.[121] Under the BEFA, irrespective of the form of organization, the registered agent thereof may be any of the following:

- an individual resident in Kentucky;
- a domestic entity; or

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[119] *See* Allen and Rutledge, *2006 Amendments to the Assumed Name Statute*, *supra* note 12.

[120] KY. REV. STAT. ANN. § 14A.4-040(1). The exceptions are domestic and foreign general partnerships that are not limited liability partnerships (KY. REV. STAT. ANN. § 14A.4-010(4)), domestic limited partnerships governed by the 1970 limited partnership act (KY. REV. STAT. ANN. § 14A.4-010(5)), and domestic rural telephone and electric cooperatives and foreign rural telephone and electric cooperatives not required to qualify to transact by a filing with the Secretary of State. KY. REV. STAT. ANN. §§ 14A.4-010(6), (7).

[121] For example, while a limited partnership could serve as the registered agent of a business corporation (*see* KY. REV. STAT. ANN. § 271B.5-010(1)(b)(5)), it could not do for a nonprofit corporation (*see* KY. REV. STAT. ANN. § 273.182(a)(b)) or for a limited partnership. *See* KY. REV. STAT. ANN. § 362.407(1)(B); *id.* § 362.2-114(3). Under prior law, there existed no mechanism by which a domestic or foreign business trust could serve as registered agent, even for a business trust.

- a foreign entity authorized to transact business in Kentucky,

provided that the business address of the registered agent is the same as that of the registered office.[122] The effective appointment of the registered agent requires that they, in writing, accept the appointment.[123]

Across all entities and foreign entities required to maintain registered office and agent, a single provision provides for the change of either or both.[124] As with the appointment of the initial registered agent, the appointment of a successor registered agent must include or be accompanied by the consent of the registered agent to serve in that capacity.[125] The Secretary of State has been directed to promulgate a form for the change of registered office or registered agent or both,[126] and the Secretary of State has the authority to make use of that form mandatory.[127] A registered agent who moves its business address (*i.e.*, the registered office) needs to notify each entity for which it is the registered agent and file a change of registered office address with the Secretary of State.[128] A change of registered office or change of registered agent is effective on the filing of the statement of change.[129]

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122 KY. REV. STAT. ANN. § 14A.4-005(1)(b), created by 2010 Acts, ch. 151, § 28.

123 KY. REV. STAT. ANN. § 14A.4-005(2), created by 2010 Acts, ch. 151, § 28. *Accord* KY. REV. STAT. ANN. § 271B.5-010(2); *id.* § 273.182(2); *id.* § 275.115(2); *id.* § 362.1-117(2); and *id.* § 362.2-114(2).

124 KY. REV. STAT. ANN. § 14A.4-010, created by 2010 Acts, ch. 151, § 29.

125 KY. REV. STAT. ANN. § 14A.4-020(1)(e), created by 2010 Acts, ch. 151, § 28.

126 KY. REV. STAT. ANN. § 14A.2-050(1)(e).

127 KY. REV. STAT. ANN. § 14A.4-025(2).

128 KY. REV. STAT. ANN. § 14A.4-010(2). There is a $10 fee for each statement of change with a cap at $2,000. *See* KY. REV. STAT. ANN. § 14A.2-060(1)(i).

129 KY. REV. STAT. ANN. § 14A.4-020(3). Certain of the predecessor statutes, including KRS § 275.120(3) and § 362.1-118(3), provided that a change of registered office or registered agent was effective upon the "delivery" of the statement of change to the Secretary of State, thereby improperly conflating the delivery of a document with the Secretary of State's filing thereof. As set forth in the BEFA, makes clear that either change is effective upon the Secretary of State's filing of the statement of change.

A registered agent may resign that role by delivering a statement of resignation to the Secretary of State.[130] That resignation may be of only the registered agent capacity, or as well serving as the registered office for the entity or foreign entity. After filing of the statement of resignation, the Secretary of State is directed to mail one copy of the resignation to the entity or foreign entity at its principal place of business address as of record with the Secretary of State. Under prior law, the agency of the registered agent, as well as the designation of the registered office, were terminated effective 31 days after the filing of the statement of resignation.[131] Under the new law, the resignation is effective upon the earlier of the 31st day of the filing of the statement of resignation or the designation by the entity or foreign entity of a successor registered office and registered agent.[132] Should the entity, within the 60 day period after the filing of the statement of resignation of the registered agent, fail to designate a replacement agent and as necessary, a replacement office, if domestic it will be subject administrative dissolution,[133] and if foreign, will be is subject to having its qualification to transact business revoked.[134]

A new provision, patterned upon Delaware law, requires that each entity and each foreign entity provide to its registered agent the business address and phone number of a natural person authorized to receive communications from the registered agent.[135] This provision serves several purposes. First, the registered agent benefits by having

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130 KY. REV. STAT. ANN. § 14A.4-030, created by 2010 Acts, ch. 151, § 30. As to limited partnerships governed by KyRULPA, the ability to resign is new. Previously, changing the registered agent required an amendment of the certificate of limited partnership, and that the registered agent could not accomplish unilaterally.

131 *See, e.g.*, KY. REV. STAT. ANN. § 275.125(3); *id.* § 362.2-116(3); and *id.* § 386.388(3)

132 KY. REV. STAT. ANN. § 14A.4-030(3), created by 2010 Acts, ch. 151, § 30.

133 *See* KY. REV. STAT. ANN. § 14A.7-010(1)(b), created by 2010 Acts, ch. 151, § 35. In the case of the failure by a domestic limited liability partnership to designate a replacement agent, and as necessary, replacement office, the dissolution will be of only the statement of qualification. *See also* Vestal and Rutledge, *Modern Partnership Law Comes to Kentucky*, *supra* note 3 at 717-18 (2007)

134 KY. REV. STAT. ANN. § 14A.9-070(2), created by 2010 Acts, ch. 151, § 46.

135 KY. REV. STAT. ANN. § 14A.4-010(3). This provision is based on Delaware Law. *See* DEL. CODE ANN. tit. 6, § 18-104(g); DEL. CODE ANN. tit. 8, § 132(d).

instructions from the business entity for whom they are serving as the registered agent as to whom they should contact upon the receipt of legal process or any notice or demand that has been served upon the registered agent. Presumably when the registered agent forwards process, notice or demand received to the communications contact, it will be difficult if not impossible for the entity to later assert that the registered agent failed to provide them adequate notice of same. The business entity or foreign business entity benefits by knowing that the registered agent will transmit process, notice or demand to a specific individual, rather than being generally addressed to the entity. Failure by an entity or foreign entity to provide the registered agent information as to a current communications contact is expressly set forth as a legitimate basis on which the registered agent may resign,[136] although there is no obligation to do so. Pursuant to otherwise legitimate interrogatories from the Secretary of State, the registered agent may be required to divulge the name and contact information with respect to the communications contact.

The registered agent appointed on behalf of a domestic or foreign entity is its "agent for service of process, notice, or demand required or permitted by law to be served on the entity or foreign entity."[137] It is through the registered agent that interrogatories from the Secretary of State may be served upon an entity or foreign entity.[138] The balance of this provision specifies alternative means for effecting service of process or delivering a notice or demand where either there is not a registered agent or that agent cannot with "reasonable diligence" be served. In those instances, the service of process, notice or demand may be transmitted to

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[136] KY. REV. STAT. ANN. § 14A.4-010(3).

[137] KY. REV. STAT. ANN. § 14A.4-040(1), created by 2010 Acts, ch. 151, § 31. Being patterned on existing law (*see, e.g.*, KRS § 271B.5-040(1); *id.* § 275.130(1); *id.* § 362.2-117(2)), prior law as to service through the registered agent and default judgments continues to apply. *See, e.g.*, *J.P. Morgan v. Engle*, 2006-CA-001182-MR (Ky. App. Sept. 21, 2007) (assertion by the defendant that they "somehow misplaced the complaint" not accepted as a valid basis to set aside default judgment); *Dakota Enterprises, Inc. v. Carter*, No. 2001-CA-002417-MR (Ky. App. May 30, 2003) (registered agent's regular and long term absence from business address not a basis for setting aside default judgment); and *Crop Production Services, Inc. v. Williamson*, No. 1998-CA-000124-MR (Ky. App. June 25, 1999) (default judgment would not be set aside based upon registered agent's failure to properly forward the complaint to the defendant).

[138] *See supra* notes 40 through 47 and accompanying text.

the entity or foreign entity by registered or certified mail, return receipt requested, addressed to the entity or foreign entity at its principal office.[139] Service, whether of legal process, or of the delivery of a demand or a notice, is perfected upon actual receipt of the certified or registered mail, on the date upon which the return receipt is signed on behalf of the entity or foreign entity or 5 days after the transmission of the communication as evidenced by the postmark.[140] There is retained the rule that either service through the registered agent or the alternative means of service by certified or registered mail are not exclusive of other means by which service of process, of a notice or of a demand may be made.[141]

The role of the registered agent has been defined as the forwarding of process and notices received and of maintaining the information on the communications contact.[142]

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[139] While the antecedent acts were clear that the registered agent was the agent of the entity for not only service of process, but also any notice or demand that could be made, the statutes were less than clear as to whether the alternative means of communication by registered or certified mail extended only to service of legal process or as well other notices or demands. To that end, the Business Entity Filing Act has been clarified to make clear that the alternative means of delivery by registered or certified mail extends to legal process and any other notice or demand that may be served on the entity.

[140] KY. REV. STAT. ANN. §§ 14A.4-040(2)(a) – (c). This provision repeats the prior rules. *See, e.g.*, KY. REV. STAT. ANN. § 271B.5-040(2); *id.* § 275.130(2); and *id.* § 362.1-120(2).

[141] KY. REV. STAT. ANN. § 14A.4-040(3). This provision repeats the prior rules. *See, e.g.*, KY. REV. STAT. ANN. § 271B.5-040(3); *id.* § 275.130(3); and *id.* § 362.1-120(4). As to this last provision, see also KY. REV. STAT. ANN. § 271B.5-040(2) service on a business corporation may be accomplished by notice to the secretary at the principal place of business address of the corporation); *id.* § 275.145 (providing, in the case of a member-managed LLC, notice to any member shall constitute notice to the LLC and that, in the context of a manager-managed LLC, notice to any manager shall constitute notice to the LLC); *id.* § 362.1-301 (providing that each partner is an agent of the partnership); *id.* § 362.190 (providing that each partner is an agent of the partnership); *id.* § 362.523 (applying the general partner's agency authority as set forth in KRS 362.190 to limited partnerships subject to the Kentucky Revised Uniform Limited Partnership Act); and *id.* § 362.2-402 (each general partner of a limited partnership governed by the Kentucky Uniform Limited Partnership Act (2006) is an agent of the limited partnership).

[142] KY. REV. STAT. ANN. § 14A. 4-050, created by 2010 Acts, ch. 151, § 32. This provision is based upon section 14 of the Model Registered Agents Act ("MRAA"). *See*

5. *Changes in the Principal Place of Business Address*

Most domestic business organizations are required, in their initial filing with the Secretary of State's office, to recite, inter alia, a principal place of business address,[143] and all foreign entities who qualify to transact business are likewise required to set forth an equivalent address.[144]

MRAA § 14, 6B U.L.A. 685 (2008). While in the drafting of the Business Entity Filing Act consideration was given to the wholesale adoption of the Model Registered Agents Act (6B U.L.A. 659 (2008)), doing so was ultimately rejected for reasons including its departure from established Kentucky practice requiring the registered agent to sign the form pursuant to which they are so designated, the desire to avoid the differentiation of various registered agents into classes of commercial and non-commercial and, as to commercial registered agents, the desire to avoid an additional burden upon the Secretary of State of maintaining the list of entities that have named a commercial registered agent as their registered agent. *See* MODEL REGISTERED AGENTS ACT § 5, 6B U.L.A. 672 (2008).

[143] *See, e.g.*, KY. REV. STAT. ANN. § 271B.2-020(1)(d) ("The mailing address of the corporation's principal office."); *id.* § 272.131(1)(c) ("The place where its principal business will be transacted."); *id.* § 272.390(1)(b) ("The place where its principal business will be transacted."); *id.* § 273.247(1)(e) ("The mailing address of the corporation's principal office."); *id.* § 275.025(1)(c) ("The mailing address of the initial principal office of the [LLC]."); *id.* § 279.030(1)(c) ("The place, including the county, where its principal office will be located."); *id.* § 279.330(1)(b) ("The address of its principal office."); *id.* § 362.555(1) ("the address of its principal office."); *id.* § 362.415(1)(d) ("A mailing address for the limited partnership."); *id.* § 362.1-1001(3)(b) ("The address of the partnership's chief executive office and, if different, the street address of an office in this Commonwealth, if any."); *id.* § 362.2-201(1)(b) ("The street address of the initial designated office."); and *id.* § 362.420(1)(a)3 ("The location of the principal place of business"). This provision does not extend to a business trust as they are not obligated, at the time of formation, to file a principal place of business address with the Secretary of State. Rather, a business trust records and updates its principal office address on its annual report.

[144] *See, e.g.*, KY. REV. STAT. ANN. § 271B.15-030(1)(d) (requiring that a foreign corporation seeking authority to transact business in Kentucky set forth on its application "[t]he street address of its principal office"); *id.* § 275.395(1)(d) (requiring that a foreign LLC seeking authority to transact business in Kentucky set forth on its application an address that may be "the principal office of the foreign [LLC]"); *id.* § 362.1-1102(1)(b) (requiring that a foreign limited liability partnership seeking authority to transact business in Kentucky set forth on its application its "[t]he street address of the partnership's chief executive officer"); *id.* § 362.2-902(1)(c) (requiring that a foreign limited partnership seeking authority to transact business in Kentucky set forth on its application an address that may be its "[t]he street and mailing address of the foreign limited partnership's principal office"); and *id.* § 273.361(1)(d) (requiring that a nonprofit corporation seeking

Previously, while some entities updated this information by a distinct filing, which had the effect of amending the organic filing, others did so by directly amending that organic filing. Under BEFA, all changes in the principal office address[145] shall be made by a distinct filing.[146] As numerous notices from the Secretary of State are set to the entity at the principal place of business address, and as third-parties may use the principal place of business address for service of a demand, notice or process,[147] it is incumbent that this information be kept up to date. Under the new system, all changes in the principal office address shall be done on a form provided by the Secretary of State's office.[148] In addition, this procedure will apply to the update of the principal office address set forth on statements of registration as a limited liability partnership filed under the Kentucky Uniform Partnership Act and statements of qualification filed under the Kentucky Revised Uniform Partnership Act (2006).[149] These filings are specifically listed as neither constitutes an "organizational filing"[150] and as such, this subsection was necessary in order to bring those filings within the common provisions for changes of principal office address. Also, a limited partnership will update its "designated office" in the same manner.[151]

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authority to transact business in Kentucky set forth on its application its "[t]he street address of its principal office"). All of these provisions are now superseded by KRS § 14A.9-030, created by 2010 Acts ch. 151, § 42.

[145] The defined term is "principal office." *See* KY. REV. STAT. ANN. § 14A.1-070(25).

[146] KY. REV. STAT. ANN. § 14A.5-010, created by 2010 Acts, ch. 151, § 32.

[147] *See* KY. REV. STAT. ANN. § 14A.4-040(2).

[148] KY. REV. STAT. ANN. § 14A.5-010.

[149] KY. REV. STAT. ANN. § 14A.5-010(2).

[150] "Organizational filing" is a defined term. *See* KY. REV. STAT. ANN. § 14A.1-070(21).

[151] KY. REV. STAT. ANN. § 14A.5-010(3).

6. Annual Reports

Generally speaking, each domestic entity is required to file an annual report with the Secretary of State. Those entities not subject to this requirement are:

- General partnerships organized under KyRUPA that are not limited liability partnerships;
- general partnerships, including those that are limited liability partnerships, organized under KyUPA;
- limited partnerships not governed by KyULPA or KyRULPA;[152]
- rural telephone cooperatives; and
- rural electric cooperatives.

All foreign entities qualified to transact business are obligated to file an annual report.[153]

A substantive change was made as to certain limited partnerships. The Kentucky Uniform Limited Partnership Act (2006) imposed an annual report obligation upon all limited partnerships formed thereunder[154] and the repeal of the foreign qualification provisions of the Kentucky Revised Uniform Limited Partnership Act[155] imposed that same requirement upon all foreign limited partnerships qualified to transact business.[156] Under the Business Entity Filing Act, beginning in 2011, limited partnerships

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152 Limited partnerships governed by Kentucky's 1970 adoption of the 1916 Uniform Limited Partnership Act (1970 Acts, ch. 97, repealed by 1988 Acts, ch. 284, § 65) or a predecessor law remain exempt from any annual report requirement.

153 KY. REV. STAT. ANN. § 14A.6-010(1).

154 *See* KY. REV. STAT. ANN. § 362.2-210.

155 *See* 2007 Acts, ch. 137, § 181.

156 *See also* Rutledge, *The 2007 Amendments*, *supra* note 12 at 235.

organized under the Kentucky Revised Uniform Limited Parntership Act ("KyRULPA")[157] will be required to file an annual report. A KyRULPA limited partnership that fails to do so will be administratively dissolved.[158]

In parallel with changes otherwise made for annual reports filed by business and nonprofit corporations,[159] the annual report must expressly list the corporation's secretary. Every business corporation organized in the Commonwealth of Kentucky is required to have a "secretary," that being the title ascribed to the person responsible "for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation."[160] There exists no statutory requirement that a corporation have a president, a treasurer or any of the other typically seen officers. Each domestic and each foreign business corporation is required, on an annual basis, to file an annual report with the Secretary of State. Prior to the most recent amendments, the information required in the annual report included "T[t]he names and business addresses of its directors and principal officers."[161] With respect to a Kentucky corporation, those principal officers would include, and indeed may be limited to, the secretary. Foreign corporations not utilizing the MBCA formula (*i.e.*, not requiring the designation of a "secretary") should identify the person having the custody of and capacity to authenticate the records of the corporation.[162]

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157 KY. REV. STAT. ANN. §§ 362.401 through 362.525. *See also id.* § 362.527.

158 *See* KY. REV. STAT. ANN. § 14A.7-010(1)(a), created by 2010 Acts, ch. 151, § 35.

159 *See* KY. REV. STAT. ANN. § 271B.16-220 as amended by 2010 Acts ch. 133, § 12; *id.* § 273.3671 as amended by 2010 Acts ch. 133, § 23.

160 KY. REV. STAT. ANN. § 271B.8-400(3) (requirement to have the officer); *id.* § 271B.1-400(23) (defining the "secretary" and referencing KRS § 271B.8-400(3)); *id.* § 273.227(3) (requirement to have the officer); and *id.* § 273.161(10) (defining the "secretary").

161 KY. REV. STAT. ANN. § 271B.16-220(1)(d); *id.* § 273.3671(1)(d).

162 *See* MBCA § 1.40(20) (defining the person discharging the MBCA § 8.40(c) obligations as the "secretary"). For example, while a Tennessee corporation is not required to designate a "secretary," that not being a defined term (*see* TENN CODE § 48-11-201), it is required to have an officer to whom is delegated "responsibility for

While the statute describes what appears to be substantially an inter-se role for the secretary (*i.e.*, the preparation and maintenance of director and shareholder minutes), it is clear from the definition of the office that the role of secretary also affects the relationship of the corporation to third parties through the capacity to authenticate corporate records,[163] the provision that the secretary serves as an alternative agent for receipt of service of process, [164] and that they are also the agent of the corporation for receipt of any other notice to be given it.[165] Rejecting annual reports that do not identify the corporate secretary:

> (i) serves a prophylactic benefit in that it identifies corporations that are otherwise violating the applicable corporation by not having a secretary; and
>
> (ii) benefits third parties who may need to make service upon the corporate secretary when the registered agent is not able to be served or who may need to otherwise give notice to the corporation.

Under the predecessor law, the annual report of an LLC that elected to be member-managed was required to list the name and business address of one member.[166] Under the Business Entity Filing Act this request is eliminated, and a member-managed LLC there is no need to single-out a member and make of public record their affiliation with the

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preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation." *See* TENN. CODE § 48-18-401(c).

[163] KY. REV. STAT. ANN. § 271B.1-400(23); *id.* § 271B.8-400(3); *id.* § 273.227(3); and *id.* § 273.161(10).

[164] KY. REV. STAT. ANN. § 271B.5-040(2). When a corporation either has no registered agent or that agent cannot be with reasonable diligence served, the KyBCA provides that service of process may be made on "the secretary of the corporation at its principal office" by either registered or certified mail, return receipt requested. KY. REV. STAT. ANN. § 271B.5-040(2).

[165] KY. REV. STAT. ANN. § 271B.1-410(4).

[166] KY. REV. STAT. ANN. § 275.190(1)(d).

LLC. Where, on the other hand, the LLC is manager-managed, the requirement to identify all managers remains in place.[167]

An annual report may be amended.[168]

7. Administrative Dissolution

With certain exceptions, the Secretary of State may initiate the administrative dissolution of a domestic entity:

- that does not respond to interrogatories from the Secretary of State;
- that does not file its annual report by the due date;
- that does not have a registered office or registered agent for sixty days or more;
- that does not notify the Secretary of State within 60 days after a change in the registered office or agent, a resignation of the registered agent or the discontinuance of a registered office;[169] or
- for such other reasons as may be provided in the Business Entity Filing Act or otherwise in the organic law governing an entity.[170]

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[167] KY. REV. STAT. ANN. § 14A.6-010(1)(d)(ii).

[168] KY. REV. STAT. ANN. § 14A.6-010(2). *See also* Rutledge, *The 2007 Amendments*, *supra* note 12 at 254-55.

[169] In that a registered office or agent cannot be changed, and a registered agent may not resign and a registered office may not be discontinued without a filing with the Secretary of State, it is difficult to contemplate a fact situation that would give rise to initiation of proceedings for administrative dissolution. Still, as a provision of this nature does appear in the Model Business Corporation Act and has appeared as well in the antecedent Kentucky acts, this provision has been retained in the Business Entity Filing Act.

[170] KY. REV. STAT. ANN. §§ 14A.7-010(1)(a) – (d).

There exist a number of exceptions and qualifications to the otherwise generally applicable basis for initiating an administrative dissolution. First, none of a general partnership that is not a limited liability partnership, a rural electric cooperative, or a rural telephone cooperative is obligated to file an annual report or to maintain a registered office or registered agent. Thus, no such failure to do so will trigger administrative dissolution. Further, as a limited partnership that is governed by an organic limited partnership act other than the Kentucky Uniform Limited Partnership Act (2006) or the Kentucky Revised Uniform Limited Partnership Act is not obligated to file an annual report, such failure to do so cannot be the basis for administrative dissolution. Each of these entities is, however, responsible for answering interrogatories from the Secretary of State, and, to that extent, each of these forms of organization are still subject to administrative dissolution for failure to respond.[171]

An entity will be given notice of the grounds for administrative dissolution[172] sent to the principal office address.[173] If those grounds are not addressed or remedied during a 60 day cure period commenced from the date the notice was sent, the entity will be administratively dissolved.[174] An entity administratively dissolved continues to exist but is restricted to activities necessary to wind up and liquidate its affairs.[175] Administrative dissolution may be cured and relates back to the date of dissolution,[176] but reinstatement is not possible if the entity has taken

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[171] What "administrative dissolution" would mean with respect to a general partnership that was not formed pursuant to a filing with the Secretary of State's office would entail is not addressed in the statute, nor is it addressed within the body of either the Kentucky Uniform Partnership Act or the Kentucky Revised Uniform Partnership Act.

[172] KY. REV. STAT. ANN. § 14A.7-020(1).

[173] KY. REV. STAT. ANN. § 14A.2-010(12).

[174] KY. REV. STAT. ANN. § 14A.7-020(2).

[175] KY. REV. STAT. ANN. § 14A.7-020(3).

[176] KY. REV. STAT. ANN. § 14A.7-030.

certain steps to wind up it affairs.[177] The denial of an application to reinstate may be appealed to the Franklin Circuit Court.[178]

8. The Expiration of the Term of Business Entities that are Not Perpetual.

Although such did not fall within the ministerial ambit of administrative dissolution, there has previously been provided in several of the business entity acts that a business entity with a defined term would, upon reaching that defined term, be treated as having been administratively dissolved.[179] Certain of those acts have in recent years been amended to provide that, within the 60 days after the entity has reached the end of its term, it may amend its organic filing to either delete or extend that term.[180] There existed, however, difficulties with integrating the limitations upon reinstatement of an entity that had dissolved for having reached its term as contrasted with an entity that has, for example, simply failed to file its annual report. In response to those problems, reaching the end of duration is no longer treated as an administrative dissolution, but rather as a unique category of end of existence.[181]

Having reached the end of its term as defined in its organic filing within the 60 days thereafter the entity may either delete the term provision or extend it to a future date. In either instance, that amendment will relate back and be effective as of the previously provided-for date of termination, and the existence of the entity will not be interrupted. Conversely, after the 60 day cure period has run, amendment of the organic filing is no longer permitted, and the organization must proceed to wind up and terminate.[182]

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177 KY. REV. STAT. ANN. § 14A.7-030(4).

178 KY. REV. STAT. ANN. § 14A.7-040.

179 *See, e.g.*, KY. REV. STAT. ANN. § 271B.14-200(4); *id.* § 275.395(1)(d).

180 *See* Rutledge, *The 2007 Amendments*, *supra* note 12 at 247-48.

181 *See* KY. REV. STAT. ANN. § 14A.8-010, created by 2010 Acts, ch. 151, § 39.

182 KY. REV. STAT. ANN. § 14A.8-010(2). At this point, the entity should be considered to have been consigned to the black pools of death.

The Secretary of State may, with respect to a business entity with a limited period of duration, issue a certificate of dissolution during the 60 day period during which the business entity may still cure its dissolution for having reached the end of its term.[183] During that 60 day cure period, the Secretary of State's office will not be able to issue, with respect to that business entity, a certificate of existence unless and until the organic filing has been amended to extend or delete the termination date.

Whether and to what degree the owners and agents of an entity dissolved for having reached the end of its duration continue to have limited liability will be addressed by other law.[184]

9. Qualification of Foreign Entities to Transact Business in Kentucky

Under BEFA all foreign entities will qualify to transact business by applying for a certificate of authority.[185] Exceptions exist for foreign LLPs, which will continue to file a statement of foreign qualification[186] and for foreign general partnerships that are not LLPs – they are not obligated to qualify.[187] A single provision sets forth that certain activities may be conducted by a foreign entity without such foreign entity being required to qualify to transact business in Kentucky.[188] While such activities will not necessitate a foreign entity qualifying to transact business in Kentucky, such activities may trigger long-arm jurisdiction, tax nexus, and/or professional regulation.[189] A foreign professional

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183 KY. REV. STAT. ANN. § 14A.8-010(3).

184 *See* KY. REV. STAT. ANN. § 14A.8-010(4). For example, while reaching the end of its defined period of duration is a cause for dissolution of an LLC (*see* KY. REV. STAT. ANN. § 275.285(1)), it is clear that the limited liability enjoyed by members and managers survives dissolution. *See* KY. REV. STAT. ANN. § 275.300(3)(i); *see also* Rutledge, *The 2007 Amendments*, *supra* note 12 at 239-42.

185 KY. REV. STAT. ANN. § 14A.9-010(1).

186 KY. REV. STAT. ANN. § 14A.9-010(4)(a). *See also* KY. REV. STAT. ANN. § 362.1-1102.

187 KY. REV. STAT. ANN. § 14A.9-010(4)(b).

188 KY. REV. STAT. ANN. § 14A.9-010(2), created by 2010 Acts, ch. 151, § 40.

189 KY. REV. STAT. ANN. § 14A.9-010(5). *See, e.g.*, *Intercargo Ins. Co. v. B.W. Farrell, Inc.*, 89 S.W.3d 422 (Ky. App. 2002) (Louisiana performance bond issuer subject to long-arm jurisdiction where bond signed in Kentucky following board meeting

service corporation's obligation to qualify to transact business will be determined as it would be for any business corporation; the prior provision that qualification was not required if the PSC does not maintain an office in Kentucky[190] has been eliminated.[191]

A foreign entity transacting business without a certificate of authority is subject to a fine of $2 per day and is barred from maintaining an action in Kentucky courts until it does so,[192] but its acts are not otherwise impaired and it may defend an action initiated against it.[193]

All foreign entities will apply for a certificate of authority on the same form.[194] The obligations under certain predecessor acts to submit a certificate of existence from the jurisdiction of organization has not been carried forward into BEFA. Rather, there is substituted a representation

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in Kentucky authorizing bond and issuer used letterhead of an affiliate with a Kentucky address); *Commonwealth Dep't of Educ. V. Gravitt*, 673 S.W.2d 428 (Ky. App. 1984) (foreign corporation that agreed to modify van in Kentucky subject to long-arm jurisdiction); *Commonwealth v. Nat'l Steeplechase and Hunt Ass'n, Inc.*, 612 S.W.2d 347, 348-49 (Ky. App. 1981) (association whose activities did not require qualification to transact business subject to service of process under the long-arm statute); *Mich. Wis. Pipeline Co. v. Commonwealth*, 474 S.W.2d 873 (Ky. 1971) (foreign corporation with property in Kentucky, subject to taxation and jurisdiction in Kentucky, not required to qualify to transact business where all activities were in interstate commerce). The long-arm statute is KRS § 454.210.

190 KY. REV. STAT. ANN. § 274.245(2).

191 *See* 2010 Acts, ch. 151, § 151, repealing KY. REV. STAT. ANN. § 274.245.

192 KY. REV. STAT. ANN. §§ 14A.9-020(4), (2). While a certificate of authority is required to "maintain" an action, it is not required in order to initiate an action. *Kattula v. Stout*, 2007 WL 2155690 (W.D. Ky. 2007).

193 KY. REV. STAT. ANN. § 14A.9-020(5). Having been sued in Kentucky, a foreign corporation is not required to have and maintain a certificate of authority in order to file a compulsory counterclaim or cross-claim. *See Reliable Mechanical Inc. v. Naylor Indus. Serv., Inc.*, No. 2000-CA-001064-MR (Sept. 14, 2001), citing *Clayton Carpet Mills, Inc. v. Martin Processing, Inc.*, 563 F. Supp. 288 (N.D. Georgia 1983); *Modern Motors, LLC v. Yelder*, No. 2009-CA-000648-MR (Ky. App. Jan. 29, 2010) (holding that CR 13.01 controls, and that the requirement to qualify to transact business in order to maintain an action does not require qualification in order to file a mandatory counterclaim).

194 KY. REV. STAT. ANN. § 14A.9-030. *See also* KY. REV. STAT. ANN. § 14A.2-050(1)(b).

that the entity validly exists under those laws.[195] The registered agent must sign or otherwise give written consent to the appointment.[196] All foreign qualifications in effect as of the effective date of BEFA are grandfathered and remain effective.[197]

A foreign entity, having been issued a certificate of authority, has the same but not greater rights and privileges, and is subject to the same restrictions and liabilities, imposed upon a domestic entity of like character.[198] With the exception of the authority of professional regulatory boards to regulate activities undertaken through a foreign business entity,[199] the Commonwealth of Kentucky is not authorized to regulate the internal affairs, including the inspection of books, of a foreign entity authorized to transact business in Kentucky.[200]

A certificate of authority will need to be amended if the foreign entity changes its real name, its period of duration, its jurisdiction or its form of organization.[201] With respect to a change in form of organization, under prior law, when a foreign entity underwent a conversion, it was necessary that the certificate of authority issued to the predecessor be withdrawn and the successor qualify to transact business in accordance with the requirements applicable to the new form. Under the new law, it will only be required that the existing certificate of authority of the predecessor entity be amended to indicate new form of organization. A change in the principal address of a foreign entity will be reflected not by amending the certificate of authority but rather by a distinct filing with the Secretary of State's office,[202] and likewise a change in the registered

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195 KY. REV. STAT. ANN. § 14A.9-030(2).

196 KY. REV. STAT. ANN. § 14A.9-030(3).

197 KY. REV. STAT. ANN. § 14A.9-030(4).

198 KY. REV. STAT. ANN. § 14A.9-050(2).

199 KY. REV. STAT. ANN. § 14A.9-050(4).

200 KY. REV. STAT. ANN. § 14A.9-050(3). *See also* Rutledge, *The 2007 Amendments*, *supra* note 12 at 238-39.

201 KY. REV. STAT. ANN. § 14A.9-040(1).

202 KY. REV. STAT. ANN. § 14A.9-040(3). *See also* KY. REV. STAT. ANN. § 14A.5-010.

agent, registered office or both will be accomplished by means of a distinct filing.[203]

Under prior law, a foreign business entity, having been qualified to transact business in Kentucky, applied for a "Certificate of Withdrawal,"[204] and until granted the foreign entity could not "withdraw from this Commonwealth."[205] The process implied by this language is that the application for a certificate of withdrawal is subject to substantive review and that the foreign entity is affirmatively precluded from ceasing activities in Kentucky until the certificate is granted. Needless to say that is not the case, and the procedure and the terminology employed in the BEFA conform to the real circumstances and practice.

Under the new law, a foreign entity that desires to forfeit its right to transact business in Kentucky may do so by filing a Certificate of Withdrawal. Assuming that the document is complete and other requirements such as the filing fee are satisfied, upon filing, the right to transact business is terminated. The suggestion of substantive review of the application to withdraw is deleted, as is the suggestion that a foreign entity may not stop actually transacting business before receiving a Certificate of Withdrawal. Proper execution of the Certificate will be determined under KRS § 14A.2-020.

The Secretary of State is directed to create a form Certificate of Withdrawal,[206] and is further empowered to make the use of that form mandatory.[207]

As was the case under prior law, a foreign entity that has withdrawn is well advised to keep current the information provided the Secretary of State as to the mailing address. Service of process is

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[203] KY. REV. STAT. ANN. § 14A.9-040(4). *See also* KY. REV. STAT. ANN. § 14A.4-020.

[204] *See, e.g.*, KY. REV. STAT. ANN. § 275.435(2).

[205] *See, e.g.*, KY. REV. STAT. ANN. § 275.435(1).

[206] KY. REV. STAT. ANN. § 14A.2-050(1)(d).

[207] KY. REV. STAT. ANN. § 14A.2-050(2).

complete upon delivery to the Secretary of State,[208] and likely a failure to receive notice of the suit because a forwarding address is out of date will not be a basis for setting aside a default judgment.

A foreign entity may have its certificate of authority revoked for a variety of reasons, including the failure to file an annual report, its dissolution in its jurisdiction of organization or failure to answer interrogatories.[209] The Secretary of State, believing grounds exist for revocation of the certificate of authority, will give notice to the foreign entity at its principal place of business address,[210] and during the 60 days after the mailing of that notice the foreign entity may remedy or otherwise address the grounds for revocation.[211] Absent cure, the Secretary of State may revoke the certificate of authority by signing a certificate of revocation, a copy of which will be sent to the foreign entity at its principal place of business address,[212] whereupon the foreign entity's authority to transact business is terminated and, while the authority of the previously appointed registered agent is not terminated, the Secretary of State becomes an alternative registered agent.[213] The revocation of the certificate of authority may be appealed to the Franklin Circuit Court.[214]

Conclusion

The Kentucky Business Entity Filing Act is a significant step in rationalizing and organizing Kentucky's various business entity laws. Non-policy driven distinctions between the various forms of business organizations, at least to the degree to which they relate to filings and interface with the Secretary of State's office, have been significantly eliminated. The task of rationalization is not, however, yet completed. While piecemeal efforts to rationalize structures and provisions that

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208 KY. REV. STAT. ANN. §§ 14A.9-060(2)(d), (4)

209 KY. REV. STAT. ANN. § 14A.9-070; *id.* § 14A.1-050(1).

210 KY. REV. STAT. ANN. § 14A.9-080(1).

211 KY. REV. STAT. ANN. § 14A.9-080(2).

212 *Id.*

213 KY. REV. STAT. ANN. §§ 14A.9-080(4), (5).

214 KY. REV. STAT. ANN. § 14A.9-090.

appear throughout the various laws continue, at the same time there exist the numerous distinctions and open questions regarding the application of non-business entity statutes among the various forms of business entities. Those individualized efforts must continue. Still, even as those issue by issue reviews are undertaken and resolved, as new business entity statutes are adopted in Kentucky, candidates including the Uniform Statutory Trust Entity Act,[215] the Uniform Limited Cooperative Association Act[216] and the Model Nonprofit Corporation Act (2008), all can be integrated into the Kentucky Business Entity Filing Act and in so doing take advantage of a single consistent filing system.

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[215] 6B U.L.A. (2010 Supp.) 41 (2010). *See generally* Thomas E. Rutledge and Ellisa O. Habbart, *The Uniform Statutory Trust Entity Act: A Review*, 65 BUS. LAW. 1055 (Aug. 2010).

[216] 6A U.L.A. 141 (2008). *See generally* James B. Dean and Thomas Earl Geu, *The Uniform Limited Cooperative Association Act: An Introduction*, 13 DRAKE J. AGRIC. L. 63 (2008).

Exhibit A

PROVISIONS OF THE BUSINESS CORPORATION ACT (KRS CH. 271B) SUPERSEDED BY BEFA

BCA §	BCA Title	BEFA §
271B.1-200(i)-(ii)	Filing Requirements	14A.2-010
271B.1-210	Forms	14A.2-050
271B.1-230	Effective time and date of filing	14A.2-070
271B.1-240	Correcting filed documents	14A.2-090
271B.1-250	Filing duty of Secretary of State.	14A.2-100
271B.1-260	Appeal from Secretary of State's refusal to file document	14A.2-110
271B.1-270	Evidentiary effect of filed document	14A.2-120
271B.1-280	Certificate of existence	14A.2-130
271B.2-020(4)	Articles of Incorporation	14A.2-140
271B.4-010	Corporate name	14A.3-010
271B.4-020	Reserved name	14A.3-020
271B.4-030	Registered name	14A.3-030
271B.5-020	Change of registered office or registered agent	14A.4-020
271B.5-025	Statement of change of mailing address	14A.5-010
271B.5-030	Resignation of registered agent	14A.4-030
271B.5-040	Service on corporation	14A.4-040
271B.14-200	Grounds for administrative dissolution	14A.7-010
271B.14-210	Procedure for and effect of administrative dissolution	14A.7-020
271B.14-220	Reinstatement following administrative dissolution or revocation under prior law – Exception – Amendment to extend or delete period of duration	14A.7-030
271B.14-230	Appeal from denial of reinstatement	14A.7-040
271B.15-010	Authority to transact business required – Exception	14A.9-010
271B.15-020	Consequences of transacting business without authority	14A.9-020
271B.15-030	Application for certificate of authority – Requirement for agent's written acceptance of appointment	14A.9-030
271B.15-040	Amended certificate of authority	14A.9-040
271B.15-050	Effect of certificate of authority	14A.9-050
271B.15-060	Corporate name of foreign corporation	14A.3-030
271B.15-070	Registered office and registered agent of foreign corporation – Requirement for agent's written acceptance of appointment	14A.4-010

271B.15-080	Change of registered office or registered agent of foreign corporation	14A.4-020
271B.15-090	Resignation of registered agent of foreign corporation	14A.4-030
271B.15-100	Service of foreign corporation	14A.4-040
271B.15-200	Withdrawal of foreign corporation	14A.9-060
271B.15-300	Grounds for revocation	14A.9-070
271B.15-310	Procedure for an effective revocation	14A.9-080
271B.15-320	Appeal from revocation	14A.9-090
271B.16-220	Annual report for Secretary of State	14A.6-010

Exhibit B

PROVISIONS OF THE LLC ACT (KRS CH. 275) SUPERSEDED BY BEFA

LLC Act §	LLC Act Title	BEFA §
275.025(8)	Contents of articles of organization	
275.040	Statement of change of mailing address	14A.5-010
275.045	Requirements for documents to be entitled to filing by Secretary of State	14A.2-010
275.050	Prescribed forms	14A.2-050
275.055 (various subsections)	Fees for filing documents with Secretary of State	14A.2-060
275.060	Effective date and time of document	14A.2-070
275.065	Articles of correction	14A.2-090
275.070	Duty of Secretary of State to file document – Manner of filing – Effect of filing or refusal to file	14A.2-100
275.075	Appeal of refusal of Secretary of State to file document	14A.2-110
275.080	Effect of certificate of Secretary of State attached to copy of filed document	14A.2-120
275.085	Certificate of existence – Certificate of authorization	14A.2-130
275.090	Prohibition against knowingly signing false document – Penalty	14A.2-140
275.100	Name of limited liability company	14A.3-010
275.105	Reserved limited liability company name	14A.3-020
275.110	Registration of name of foreign limited liability company	14A.3-030
275.120	Change of registered office or registered agent	14A.4-020
275.125	Resignation of registered agent	14A.4-030
275.130	Service of process	14A.4-040
275.190	Annual report	14A.6-010
275.295	Administrative dissolution – Reinstatement	14A.7-010
275.385	Transactions of business by foreign limited liability company	14A.9-010
275.390	Certificate of authority required of foreign limited liability company for access to courts – Civil penalty for violation	14A.9-020
275.395	Application for certificate of authority for foreign limited liability company	14A.9-030
275.400	Amended certificate of authority for foreign limited liability company	14A.9-040

275.405	Effect of certificate of authority for foreign limited liability company	14A.9-050
275.410	Name used by foreign limited liability company	14A.3-040
275.420	Change of registered office or registered agent for foreign limited liability company	14A.4-020
275.425	Statement of resignation of registered agent of foreign limited liability company	14A.4-030
275.430	Service of process on foreign limited liability company	14A.4-040
275.435	Certificate of withdrawal for foreign limited liability company	14A.9-060
275.440	Grounds for revocation of certificate of authority of foreign limited liability company	14A.9-070
275.445	Notice of determination – Revocation of certificate – Effect of revocation	14A.9-080
275.450	Appeal of revocation	14A.9-090

Exhibit C

PROVISIONS OF KYRUPA AND KYULPA (KRS CH. 362.1 AND 362.2) SUPERSEDED BY BEFA

KyRUPA / KyULPA §	Section Title	BEFA §
362.1-109 (various subsections)	Fees for filing documents with Secretary of State	14A.2-060
362.1-110	Effective time and date of document	14A.7-010
362.1-111	Duty of Secretary of State to file document – Manner of filing – Effect of filing or refusal to file	14A.2-100
362.1-112	Appeal of refusal of Secretary of State to file	14A.2-110
362.1-113	Effect of certificate of Secretary of State attached to copy of statement filed	14A.2-120
362.1-114	Partnership names	14A.3-010
362.1-115	Reserved partnership name	14A.3-020
362.1-116	Registration of name of foreign partnership	14A.3-030
362.1-118	Change of registered office or registered agent	14A.4-020
362.1-119	Resignation of registered agent	14A.4-030
362.1-120	Service of process	14A.4-040
362.1-121	Annual report	14A.6-010
362.1-123	Revocation of a statement of foreign qualification	14A.9-070
362.1-1002	Name of limited liability partnership	14A.3-010
362.1-1101	Law governing foreign limited liability partnership	14A.9-050
362.1-1103	Effect of failure to qualify	14A.9-020
362.1-1104	Activities not constituting transacting business	14A.9-010
362.2-108	Name of limited partnership	14A.3-010
362.2-109	Reservation of name	14A.3-020
362.2-114(3), (4)	Office and agent for service of process	14A.4-010
362.2-115	Change of designated office or agent for service of process	14A.4-020
362.2-116	Resignation of agent for service of process	14A.4-030
362.2-117	Service of process	14A.4-040
362.2-119	Prescribed forms	14A.2-050
362.2-120	Effective time and date of document	14A.2-070
362.2-121	Requirements for documents to be filed with the Secretary of State	14A.2-010
362.2-122 (various subsections	Fees for filing documents with Secretary of State	14A.2-060

362.2-123	Registration of name of foreign limited partnership	14A.3-030
362.2-124	Duty of Secretary of State to file document – Manner of filing – Effect of filing or refusal to file – Appeal of refusal of Secretary of State to file document	14A.2-100
362.2-125	Effect of certificate of Secretary of State attached to copy of filed document	14A.2-120
362.2-201(5)	Formation of limited partnership – Certificate of limited partnership	14A.4-010
362.2-207	Correcting filed record	14A.2-090
362.2-209	Certificate of existence or authorization	14A.2-130; 14A.2-140
362.2-210	Annual report for Secretary of State	14A.6-010
362.2-809	Administrative dissolution	14A.7-010
362.2-810	Reinstatement following administrative dissolution	14A.7-030
362.2-811	Appeal from denial of reinstatement	14A.7-040
362.2-902	Application for certificate of authority	14A.9-030
362.2-903	Activities not constituting transacting business	14A.9-020
362.2-904	Filing of certificate of authority	N/A
362.2-905	Noncomplying name of foreign limited partnership	14A.3-040
362.2-906	Revocation of certificate of authority	14A.9-070
362.2-907	Cancellation of certificate of authority – Effect of failure to have certificate	14A.9-080
362.2-908	Changes and amendment to application for certificate of authority	14A.9-040
362.2-909	Cancellation of certificate of authority by foreign limited partnership	14A.9-060