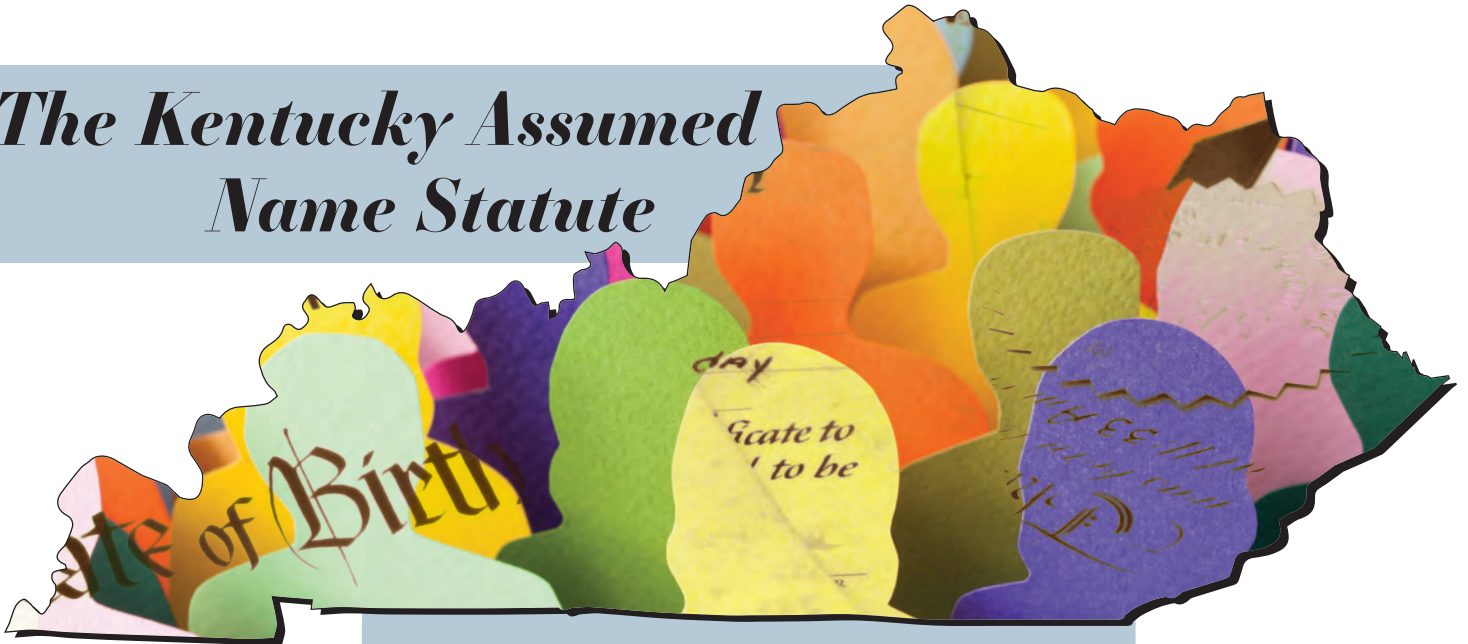


The Kentucky Assumed Name Statute



BY: MARGARET "MEGAN" WALTON
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The Kentucky assumed name statute¹ was significantly revised in 2006 with the objectives of:

- ordering and rationalizing the "real names";
- clarifying the county where the certificate of assumed name is to be filed;
- clarifying the amendment and survival of certificates of assumed name; and
- clarifying the effect of an assumed name filing.²

Since then there have been a number of revisions to account for new organizational forms and to account for the adoption of the Kentucky Business Entity Filing Act. For that reason, a new and expanded review of the statute is in order.

WHY CERTIFICATES OF ASSUMED NAME?

The purpose of the assumed name statute is to preclude "sailing under false colors" so that persons doing business may know who is the real party to the transaction. In *Munday v. Mayfair Diagnostic Lab*,³ the court set forth the purpose of the assumed name statute, namely:

to inform members of the public, including appellants, of the identity of persons doing business under an assumed name.⁴

If an individual does business with XYZ, he or she is entitled to know that XYZ is the assumed name of 123, Inc. and that, in the

event of a claim, it is against 123, Inc. that suit should be brought.

The *Munday* court's explanation of the purpose of the assumed name statute is consistent with a prior attorney general opinion.⁵ Therein, the purpose of the assumed name statute was described as:

We believe that its purpose is to permit persons a means of discovering the true identity of the parties with whom they are doing business and, accordingly, to prevent fraud and deception by business entities which seek to sail under false colors.

Today it is provided that no individual or business entity may conduct business under other than its "real name" unless a certificate of assumed name has been filed.⁶

"REAL NAMES"

The determination of the "real name" of a person or business organization is the first step in the application of the assumed name statute. Only if business is being conducted under a name other than the real name is the registration of an assumed name necessary. Before 2006, KRS § 365.015(1), which defines the possible "real names," was written in a pair of sentences, one for individuals and domestic business organizations, and one for foreign business organizations. Neither sentence was user friendly. As rewritten in 2006, KRS § 365.015(1) has been made easier to navigate through its division into three primary categories (individuals, domestic business entities, foreign business entities) and numerous entity

specific subparagraphs thereunder. Since then, as new organizational forms such as the statutory trust,⁷ the limited cooperative association⁸ and the unincorporated nonprofit association⁹ have been adopted, the assumed name statute has been amended to keep pace. Under the current statute:

An Individual	Surname ¹⁰
A Domestic . . .	
General Partnership, not an LLP, no Statement of Partnership Authority filed	Name including the surname of all of the partners ¹¹
General Partnership, not an LLP, Statement of Partnership Authority filed	Name on Statement of Partnership Authority ¹²
General Partnership that is an LLP	Name on Statement of Qualification or predecessor Statement of Registration ¹³
Limited Partnership ¹⁴	Name on Certificate of Limited Partnership ¹⁵
Business or Statutory Trust	Name on Declaration of Trust ¹⁶
Corporation ¹⁷	Name on Articles of Incorporation
Limited Liability Company	Name on Articles of Organization ¹⁸
Limited Cooperative Association	Name on Articles of Association ¹⁹
Unincorporated Nonprofit Association that has filed a certificate of association	Name of Certificate of Association ²⁰
Unincorporated Nonprofit Association that has not filed a certificate of association	The name under which the association usually acts ²¹
A Foreign . . .	
General Partnership, not an LLP	Name recognized in jurisdiction of organization as the real name ²²
General Partnership that is an LLP	Name on Statement of Foreign Qualification ²³
Limited Partnership	Name on Certificate of Limited Partnership or fictitious name adopted in Kentucky ²⁴
Business or Statutory Trust	Name recognized in jurisdiction of organization as the real name or fictitious name adopted in Kentucky ²⁵
Corporation ²⁶	Name on Articles of Incorporation or fictitious name adopted in Kentucky ²⁷
Limited Liability Company	Name on Articles of Organization or fictitious name adopted in Kentucky ²⁸
Limited Cooperative Association	Name on Articles of Association or fictitious name adopted in Kentucky ²⁹
Unincorporated Nonprofit Association	Name recognized in jurisdiction of organization as real name ³⁰

SERIES

Numerous states provide for the organization of “series,”³¹ typically in their respective LLC Acts³² but in Delaware also in the limited partnership³³ and statutory trust acts.³⁴ Kentucky provides for series in its Statutory Trust Act.³⁵

The assumed name statute allows a series entity³⁶ to on behalf of a series thereof file an assumed name certificate. However, even as the assumed name is adopted on behalf of a particular series, it is recorded in the name of the series entity.³⁷ Both the name of the series entity and the name of the series adopting the assumed name will need to be set forth on the certificate of assumed name. Note, however, that the assumed name statute does not define what is the “real name” of a series, and a series of a foreign series entity cannot for itself qualify to transact business. Therefore, caution should be utilized in preparing any certificate of assumed name on behalf of a series of a series entity, and “over disclosure” may be the best practice.

QUALIFICATION TO TRANACT BUSINESS

Under the prior (pre-2006) law, before filing an assumed name certificate, a foreign corporation, limited partnership, LLC, LLP or business trust was required to qualify to transact business.³⁸ That rule has largely been abolished, and under current law only a foreign LLP is required to qualify to transact business before filing a certificate of assumed name.³⁹ A foreign general partnership that is not an LLP is not able to qualify to do business, and any such requirement would preclude the filing of the assumed name certificate.⁴⁰

DISTINGUISHING ASSUMED NAMES FROM FICTITIOUS NAMES

Fictitious names and assumed names are entirely distinct from one another and should not be confused or assumed to be synonymous. Only a foreign (i.e., not organized in Kentucky) business entity may adopt a fictitious name, and then only if it seeks to qualify to transact business in Kentucky. Then, if the real name of the foreign entity is not available because it is not distinguished on the records of the Secretary of State from an existing name,⁴¹ it may for purposes of transacting business in Kentucky adopt a fictitious name.⁴² Thereafter, for purposes of Kentucky law, the foreign entity's fictitious name is its real name.⁴³ A foreign entity may have only one fictitious name, but after qualification to transact business it may adopt any number of assumed names.

THE CERTIFICATE OF ASSUMED NAME

The certificate of assumed name sets forth:

- the real name of the person or entity filing the certificate;
- its address; and
- the assumed name.⁴⁴

Each assumed name must be distinguishable on the records of the Secretary of State,⁴⁵ and a separate certificate needs to be filed for each assumed name.⁴⁶ A certificate may have a delayed effective date, otherwise it is effective upon filing.⁴⁷ The \$20 filing fee for certificates and amendments is codified at KRS § 365.015(11). There is no filing fee for a withdrawal of a certificate.

WHERE TO FILE THE CERTIFICATE OF ASSUMED NAME?

Almost all certificates of assumed name are filed initially with the Secretary of State. The exception is for filing on behalf of an individual.

For individuals, who file only at the county level,⁴⁸ the appropriate county is that in which they maintain their "principal place of business."⁴⁹ Previously sole proprietorships filed in the county in which they were deemed a resident under the UCC. However, the rewrite of UCC Article 9 substantially revised the location of a debtor for filing purposes. Under old Article 9, a sole proprietorship was located at (1) his or her place of business, (2) the chief executive office if he or she had more than one place of business, or (3) his or her residence if there was no place of business.⁵⁰ Revised Article 9 provides that a sole proprietorship, as an individual debtor, is

located at his or her principal residence.⁵¹ It is entirely possible, however, for a person to be resident in one county while having a principal place of business in another. "Principal place of business" is a fact question, but one that will present few if any problems for most sole proprietorships. When there is a question, such as a sole proprietor who has offices in two counties and one is not clearly a satellite office, filing in both counties would be prudent.⁵²

For business organizations, the certificate of assumed name is filed in the county in which the organization maintains its registered office. If no registered office is required, such as for a domestic general partnership that is not an LLP or an unincorporated non-profit association that has not filed a certificate of association, the assumed name filing is made in the county where the entity has its principal place of business.⁵³ If neither applies, such as a Kentucky organized general partnership that does not have a place of business in Kentucky, only the Secretary of State filing is required, and no county level filing need be made.⁵⁴

THE AMENDMENT AND SURVIVAL OF CERTIFICATES OF ASSUMED NAME

A certificate of assumed name may be amended to address a change in the real name or the address of the filer.⁵⁵ Prior to 2006, there was no statutory authority for such amendments, and, for example, a corporation that moved its principle place of business would be required to (i) withdraw all of its certificates of assumed name and (ii) then file new certificates for those same names but now with the new address. As the "real name" of a general partnership is the name of all of the general partners,⁵⁶ and as the certificate of assumed name needs to set forth the partnership's "real name,"⁵⁷ any change (addition or subtraction of a partner or a change in a partner's name) will necessitate an amendment to each of the partnership's certificates of assumed name.⁵⁸

Any certificate of assumed name filed by a party to a merger or conversion shall pass to the survivor of the merger or conversion.⁵⁹ Likewise, in the case of a partnership or limited partnership converting to a LLC in accordance with KRS § 275.370, all assumed names of the converting partnership will become assumed names of the converted LLC.⁶⁰ Still, the better practice is to amend those certificates to set forth the name of the successor organization and its address.⁶¹

EXPIRATION OF CERTIFICATES OF ASSUMED NAME

Beginning in 2006, a five year period of effectiveness was added to certificates of assumed name.⁶² An existing certificate may be amended in the last six months of its effective period in order to extend it for another term of five years.⁶³

ASSUMED NAME FILINGS AS INTELLECTUAL PROPERTY

Practitioners have not always agreed on the effect of an assumed name certificate. Some viewed it as a form of intellectual property protection. Others viewed it as a consumer protection mechanism without an intellectual property component, and this view is

supported by an Attorney General Opinion.⁶⁴ In 2006 the statute was amended to provide that “the filing of a certificate of assumed name shall not automatically prevent the use of that name or protect that name from use by other persons.”⁶⁵ While the Secretary of State will not accept for filing a certificate of assumed name for an indistinguishable name,⁶⁶ the filing will not preclude the filing of a trademark or service mark of the same name.⁶⁷ At the same time, an existing trademark or service mark filing does not preclude a third party filing a certificate of assumed name that is either identical or indistinguishable.⁶⁸ Obviously no check is made against federal filings or against common law rights. Counsel need to carefully consider what intellectual property protections are necessary as a matter separate from assumed name filings.

BRINGING SUIT AGAINST AN ASSUMED NAME

A business corporation may sue or be sued in its own name.⁶⁹ Similar rules apply to limited liability companies,⁷⁰ general partnerships,⁷¹ nonprofit corporations,⁷² statutory trusts,⁷³ and limited cooperative associations.⁷⁴ Each of these organizational forms may adopt an assumed name. While there is no holding from a Kentucky court directly on point, the correct practice is to bring suit on behalf of or against a business organization under its real name and not under an assumed name. In *Edwards v. Headcount Management*,⁷⁵ in the course of holding that objection to bringing suit in an assumed name had not been brought in a timely basis, the court wrote:

Nonetheless, presuming without decision that a party is indeed barred from suing in its assumed name, we agree with Headcount that Edwards waived the defense of capacity.

In light of this “presuming”, the best practice must be to identify all plaintiffs and defendants by their real names, saving for the identification of the parties the listing of any assumed names that may be relevant to the action.⁷⁶

AND IF NO CERTIFICATE OF ASSUMED NAME IS FILED?

What then are the consequences of doing business under an assumed name but not filing a certificate of assumed name? At one time doing business under an assumed name without having complied with the assumed name statute could result in significant fines, prison and the inability to enforce agreements entered into under the assumed name.⁷⁷ Today the failure to comply is not so draconian, a point addressed by the *Munday* decision.⁷⁸ A partnership operated a medical diagnostic lab, Mayfair Diagnostic Laboratory. No assumed name filing was made by the partnership. Shortly before the running of the statute of limitations on a medical malpractice claim, suit was filed against Mayfair Diagnostic Laboratory and Dr. James Callis. In the course of discovery it was revealed that Mayfair was a general partnership and that Callis was not a partner therein. Some sixteen months after the injury was discovered the complaint was amended to add a partner. An order of dismissal on the grounds of the statute of limitations was granted.⁷⁹ On the final appeal, the Supreme Court presented the question as:

The issue here is whether appellants’ amended complaint,

which is conceded to have named at least one Mayfair partner, was timely by virtue of the failure of the partners in Mayfair to comply with the assumed name statute. Said otherwise, are the Mayfair partners entitled to benefit of KRS 413.140, the applicable statute of limitations, despite their failure to comply with a statute which is designed to inform the public of the identities of person doing business under an assumed name?⁸⁰

After noting other law as to equitable estoppel and the obligation to disclose identity, the court wrote:

[W]e reiterate that the purpose of the assumed name statute is to inform members of the public, including appellants, of the identity of persons doing business under an assumed name. It could not be disputed that for lawful use, including litigation, the statute imposes a duty to provide such information. Thus, appellees’ conduct amounted to a violation of a statute designed to provide appellants information which was essential to the commencement of litigation. We have no doubt that such conduct may be properly regarded as obstruction by indirect means within the purview of KRS 413.190(2).⁸¹

In consequence thereof, it was held that “Appellees’ failure to comply with KRS 365.015 was sufficient to create an estoppel under KRS 413.190(2), thereby tolling the statute of limitation during the period of noncompliance.”⁸² Notwithstanding numerous amendments to the Assumed Name Statute since 1992, the General Assembly has not considered, much less adopted, any contrary application of the failure to comply with it.

THE “FULL NAME” OF A BUSINESS ENTITY FOR PURPOSES OF FILING DEEDS

In 2016, the General Assembly amended KRS § 382.135 by the addition of subsection (1)(a) thereto, requiring that a deed set forth the “full name” each of the grantor and the grantee.⁸³ The statute, as amended, did not identify what constitutes the “full name.” The 2017 revision to KRS § 382.135 addressed that lacuna, defining what would constitute the “full name” for both natural persons and various business organizations.⁸⁴ With respect to business organizations, the “full name” is synonymous with the “real name” as determined under the Kentucky Assumed Name Statute.⁸⁵ **BB**

ABOUT THE AUTHORS

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ENDNOTES

1. Ky. Rev. Stat. Ann. § 365.015.
2. The assumed name statute as amended through 2006 was reviewed in Maryellen B. Allen with 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).
3. 831 S.W.2d 912 (Ky. 1992).
4. *Munday*, 831 S.W.2d at 915. The *Munday* rule as to the purpose of the assumed name statute was repeated in *Thompson v. Otis Elevator Co.*, Civ. Action No. 3:10-CV-139, 2012 WL 2873884 (W.D. Ky. July 12, 2012). See also *Hayes v. Providence Citizens' Bank & Trust Co.*, 218 Ky. 128, 290 S.W. 1028 (1927) (the purpose of the assumed name statute was protection of the public from fraud and deceit by requiring disclosure of the identities of persons doing business under an assumed name.).
5. OAG 78-322 (May 8, 1978), 1978 WL 26167.
6. See Ky. Rev. Stat. Ann. § 365.015(2)(a).
7. See Ky. Rev. Stat. Ann. §§ 386A.1-010 et seq.; see also Rutledge *The Kentucky Uniform Statutory Trust Act (2012): A Review*, 40 N. Ky. L. Rev. 93 (2012-13).
8. See Ky. Rev. Stat. Ann. §§ 272A.1-010 et seq.
9. See Ky. Rev. Stat. Ann. §§ 273A.010 et seq.; see also Rutledge *The 2015 Amendments to the Kentucky Business Entity Statutes*, 43 N. Ky. L. Rev. 129, 156-72 (2015-16).
10. See Ky. Rev. Stat. Ann. § 365.015(1)(a). The surname can be that from birth, or changed by a court or in the case of a woman, her name as changed by marriage. The statute does not address the name of a man who changes his name by marriage. OAG 75-223 (March 24, 1975) (*not available on Westlaw*) and certain admittedly dated cases (see, e.g., *Commonwealth v. Richey*, 171 S.W. 330 (Ky. 1916); *Commonwealth v. Bassett*, 171 Ky. 385, 168 S.W. 759 (Ky. 1916)) make it clear that the focus is upon the surname and not the given name.
11. See Ky. Rev. Stat. Ann. § 365.015(1)(b)1. The prior rule, then set forth in KRS § 365.015(1), was amended in 1998 to provide that the real name of a partnership is one that includes the names of *all* of the partners. See 1998 Ky. Acts, ch. 341, § 56. Previously, it was necessary only that the name of the partnership include the name of one of the partners.
12. See Ky. Rev. Stat. Ann. § 365.015(1)(b)2. A Statement of Partnership Authority allows a partnership to put of public record declarations as to who does or does not have authority to bind the partnership as to certain matters. If dealing with partnership real property and recorded with the appropriate county clerk, third-parties may rely on the statement. See Ky. Rev. Stat. Ann. § 362.1-303; see also Thomas E. Rutledge and Allan W. Vestal, Rutledge & Vestal on Kentucky Partnerships and Limited Partnerships 59-61 (2010).
13. See Ky. Rev. Stat. Ann. § 365.015(1)(b)3. A Statement of Qualification is the filing by which a general partnership governed by KyRUPA elects to be a limited liability partnership. See Ky. Rev. Stat. Ann. § 362.1-931. A Statement of Registration is filed by a partnership governed by KyUPA seeking to be registered as a registered limited liability partnership. See Ky. Rev. Stat. Ann. § 362.555.
14. The reference to a limited partnership includes a limited liability limited partnership.
15. See Ky. Rev. Stat. Ann. § 365.015(1)(b)4. One continuing gap in KRS § 365.015 is that of limited partnerships formed prior to the adoption of KRS §§ 362.401 through 362.525. Those limited partnerships have never been required to file a certificate of limited partnership with the Secretary of State, so it is not possible to determine on its records the real name of the limited partnership. As such, the references to a limited partnership in KRS § 365.015(1)(b)4 must be understood to refer to a limited partnership formed under either KRS §§ 362.401 through 362.525 (*i.e.*, the 1988 adoption by Kentucky of the Revised Uniform Limited Partnership Act with the 1985 amendments thereto) or under Kentucky Uniform Limited Partnership Act (2006) (KRS ch. 362.2). While the case may be made that the "certificate of limited partnership filed pursuant to ... predecessor law" would include a filing made only with a county clerk, that reading is at best a stretch.
16. See Ky. Rev. Stat. Ann. § 365.015(1)(b)5.
17. This reference to a "corporation" extends to business corporations formed under the Kentucky Business Corporation Act (KRS ch. 271B), nonprofit corporations formed under the Kentucky Nonprofit Corporation Acts (KRS ch. 273) and to business corporations that are as well governed by the Professional Service Corporation Act (KRS ch. 274). See also Ky. Rev. Stat. Ann. § 274.015(2). It also encompasses cooperative corporations organized under KRS chapter 272. See also Ky. Rev. Stat. Ann. § 272.042.
18. As adopted in 1994, the LLC Act did not address the use of assumed names by LLCs, and the filing of certificates of assumed names by LLCs was not addressed in KRS § 365.015 in that KRS § 365.015(1) did not then define the "real name" of an LLC. The 1996 General Assembly failed to enact proposed legislation to allow LLCs to make assumed name filings. H.B. 850 (introduced March 1, 1996); H.B. 862 (introduced March 1, 1996). The 1998 General Assembly considered and passed amendments to the assumed name statute defining the real name of an LLC and permitting assumed name filings by LLCs. See 1998 Ky. Acts, ch. 351, § 56.
19. See Ky. Rev. Stat. Ann. § 365.015(1)(b)8.
20. See Ky. Rev. Stat. Ann. § 365.015(1)(b)9.
21. See Ky. Rev. Stat. Ann. § 365.015(1)(b)9.
22. Ky. Rev. Stat. Ann. § 365.015(1)(c)1.
23. Ky. Rev. Stat. Ann. § 365.015(1)(c)2. A Statement of Foreign Qualification is the means by which a foreign LLP qualifies to transact business in Kentucky. See Ky. Rev. Stat. Ann. 362.1-931; see also Rutledge and Vestal, *supra* note 12 at 149-51. Foreign LLPs are not subject to the otherwise integrated foreign qualification procedures of the Kentucky Business Entity Filing Act. See Rutledge and Tzanetos, *The Kentucky Business Entity Filing Act: The Next Step Forward in the Rationalization of Business Entity Law*, 38 N. Ky. L. Rev. 423, 446 (2011).
24. Ky. Rev. Stat. Ann. § 365.015(1)(c)3. If a foreign limited partnership desires to qualify to transact business in Kentucky, and the name on its certificate of limited partnership (*i.e.*, its "real name") is indistinguishable from a name already of record in Kentucky, it may adopt a "fictitious name" and qualify under that name. See Ky. Rev. Stat. Ann. § 14A.3-040.
25. Ky. Rev. Stat. Ann. § 365.015(1)(c)4. The prior (pre-2006) statute spoke of the fictitious name adopted by a foreign business trust, even though there was no statutory authority for the adoption of a fictitious name by a foreign business trust. Today a foreign business or statutory trust may, if necessary, adopt a fictitious name. See Ky. Rev. Stat. Ann. § 14A.3-040.
26. As noted previously in connection with a domestic "corporation," this term extends to foreign nonprofit corporations and may extend to foreign forms that are "incorporated."
27. Ky. Rev. Stat. Ann. § 365.015(1)(c)5. If a foreign corporation desires to qualify to transact business in Kentucky, and the name on its articles of incorporation is indistinguishable from a name already of record in Kentucky, it may adopt a "fictitious name" and register under that name. Ky. Rev. Stat. Ann. § 14A.9-030(1)(a); *id.* § 14A.3-040.

28. Ky. Rev. Stat. Ann. § 365.015(1)(c)6. If a foreign limited liability company desires to qualify to transact business in Kentucky, and the name on its articles of organization is indistinguishable from a name already of record in Kentucky, it may adopt a “fictitious name” and register under that name. Ky. Rev. Stat. Ann. § 14A.9-030(1)(a); *id.* § 14A.3-040.
29. Ky. Rev. Stat. Ann. § 365.015(1)(c)7. With respect to the articles of association of a limited cooperative association, see Ky. Rev. Stat. Ann. § 272A.3-101.
30. Ky. Rev. Stat. Ann. § 365.015(1)(c)8.
31. With respect to series generally, *see, e.g.*, Rutledge, *Again, For the Want of a Theory: The Challenge of the “Series” to Business Organization Law*, 46 American Business Law Journal 311 (2009); Rutledge, *The Internal Affairs Doctrine and Series Limited Liability – Never the Twain to Meet?*, 17 Bus. Entities 4 (March/April 2015); Rutledge, *The Man Who Tells You He Understands Series Will Lie To You About Other Things As Well*, 16 J. Passthrough Entities 53 (March/April 2013).
32. As of December 2016, there are fourteen United States jurisdictions that have authorized the formation of series limited liability companies having inter-series liability protection. They are Alabama (Ala. Code § 10A-5A-11.01); District of Columbia (D.C. Code § 29-802.06); Delaware (Del. Code Ann. tit. 6, § 18-101 *et seq.*); Illinois (805 Ill. Comp. Stat. 180/37-40); Iowa (Iowa Code Ann. § 489.1201); Kansas (Kan. Stat. Ann. § 17-76, 143); Missouri (Mo. Rev. Stat. § 347.186); Montana (Mont. Code Ann. § 35-8-304); Nevada (Nev. Rev. Stat. § 86.296); Oklahoma (Okla. Stat. tit. 18, § 2054.4); Puerto Rico (P.R. Laws Ann. tit. 14, § 3967 (General Corporations Act 2009)); Tennessee (Tenn. Code Ann. § 48-249-309); Texas (Tex. Bus. Orgs. Code § 101.601); and Utah (Utah Code Ann. § 48-3a-1201 *et seq.*).
33. *See* Del. Code Ann. tit. 6, § 18-215.
34. *See* Del. Code Ann. tit. 12, § 3806(b)(2).
35. *See* Ky. Rev. Stat. Ann. §§ 386A.4-010 *et seq.*; *see also* Rutledge *The Kentucky Uniform Statutory Trust Act (2012): A Review*, 40 N. Ky. L. Rev. 93, 120-30 (2012-13).
36. *See* Ky. Rev. Stat. Ann. § 14A.1-070(37) (defining “series entity”).
37. *See* Ky. Rev. Stat. Ann. § 365.015(12).
38. *See* OAG 84-155 (April 20, 1984), 1984 WL 185806.
39. *See* Ky. Rev. Stat. Ann. § 362.1-951(1).
40. This does not mean that a foreign general partnership cannot transact business in Kentucky, only that it does so outside of the qualification regimen applicable to other business organizations.
41. *See* Ky. Rev. Stat. Ann. § 14A.3-040(1).
42. *Id.*
43. *See, e.g.*, Ky. Rev. Stat. Ann. § 365.015(c)(3).
44. *See* Ky. Rev. Stat. Ann. § 365.015(2)(b).
45. *See* Ky. Rev. Stat. Ann. § 365.015(2)(d).
46. *See* Ky. Rev. Stat. Ann. § 365.015(2)(c).
47. *See* Ky. Rev. Stat. Ann. § 365.015(10).
48. Ky. Rev. Stat. Ann. § 362.015(3). There is no mechanism by which a sole proprietorship may file a certificate of assumed name with the Secretary of State.
49. *Id.*
50. *See* Ky. Rev. Stat. Ann. § 9-103 (repealed 2000 Ky. Acts, ch. 408, § 23).
51. Ky. Rev. Stat. Ann. § 355.9-307(2)(a).
52. Ky. Rev. Stat. Ann. § 355.9-307(1) (UCC § 9-307(a)) defines “place of business” as “a place where a debtor conducts its affairs,” which is rather scant guidance on the question.
53. Ky. Rev. Stat. Ann. § 362.015(3). Note that Ky-RUPA speaks to the location of the “chief executive office” of the partnership, and not to its “principle place of business.” *See* Ky. Rev. Stat. Ann. § 362.1-1102(1)(b). Consideration needs to be given as to whether they are the same or different.
54. Ky. Rev. Stat. Ann. § 362.015(3).
55. Ky. Rev. Stat. Ann. § 365.015(9).
56. Ky. Rev. Stat. Ann. § 365.015(1)(c)1.
57. Ky. Rev. Stat. Ann. § 365.015(2)(b).
58. *See* Ky. Rev. Stat. Ann. § 362.015(6).
59. Ky. Rev. Stat. Ann. § 365.015(8).
60. *See* Ky. Rev. Stat. Ann. § 362.015(8).
61. Ky. Rev. Stat. Ann. § 365.015(9).
62. *See* Ky. Rev. Stat. Ann. § 362.015(4).
63. *Id.*
64. OAG 78-322.
65. Ky. Rev. Stat. Ann. § 365.015(7). This treatment of assumed names is consistent with that of real names. *See* Ky. Rev. Stat. Ann. § 14A.3-101(18).
66. Ky. Rev. Stat. Ann. § 362.015(2)(d).
67. In determining whether a name is distinguishable, the Secretary of State looks at the business entity names (real, fictitious, assumed, and reserved) of record, and does not search trademark or service mark filings. Also, organizational form identifiers (*e.g.*, Inc., LLC) are ignored in assessing distinguishable.
68. In processing state trademark and service mark filings made pursuant to KRS § 365.571, no review is made of business entity names (real, fictitious, assumed, or reserved) of record with the Secretary of State.
69. Ky. Rev. Stat. Ann. § 271B.3-010(1)(a).
70. Ky. Rev. Stat. Ann. § 275.330.
71. Ky. Rev. Stat. Ann. § 362.605; *id.* § 362.1-307(1).
72. Ky. Rev. Stat. Ann. § 273.171(2).
73. Ky. Rev. Stat. Ann. § 386A.3-060(1).
74. Ky. Rev. Stat. Ann. § 272A.1-060(1).
75. 421 S.W.3d 403 (Ky. App. 2014).
76. *Id.* at 405.
77. *See, e.g., Hunter v. Big Four Auto Co.*, 162 Ky. 778, 173 S.W. 120 (Ky. 1915).
78. *Munday v. Mayfair Diagnostic Laboratory*, 831 S.W.2d 912 (Ky. 1992).
79. Recall that, at this time, a partnership could not be sued in its own name. Rather, suit had to be brought against at least one partner. *See Telamar-keing Comm., Inc. v. Liberty Partners*, 798 S.W.2d 462 (Ky. 1990). Since then the statutes have been amended, and partnerships may be sued in their common name. *See* Ky. Rev. Stat. Ann. § 362.605, created by 1994 Ky. Acts, ch. 389, § 107; *id.* § 362.1-307(1); *see also* Rutledge and Vestal, *supra* note 12 at 60-70.
80. 831 S.W.2d at 913-14.
81. 831 S.W.2d at 915.
82. *Id.*
83. *See* Ky. Rev. Stat. Ann. § 382.135 as amended by 2016 Ky. Acts, ch. 86, § 15.
84. *See* Ky. Rev. Stat. Ann. § 382.135(6), created by 2017 Ky. Acts, ch. 193, § 22.
85. *See* Ky. Rev. Stat. Ann. § 365.015. With respect to individuals, the “full name” will be as determined under the Kentucky UCC for purposes of identifying a debtor who is a natural person. Typically this will be their name as set forth on a valid driver’s license. *See* Ky. Rev. Stat. Ann. § 355.9-503. Otherwise it will be the first given name and a surname. *Id.*