

BULLETIN 97-6

TO: All Companies Licensed in
the Commonwealth of Kentucky

FROM: George Nichols III
Commissioner

DATE: November 14, 1997

RE: Assumed Names for Insurers

Recently, the Department has received several requests from insurers for permission to operate under an assumed of "d/b/a" (doing business as) name. The Department would like to clarify its position regarding insurers acting under an assumed name.

In general, the Department's policy is to discourage the use of assumed names by insurers. Use of the insurer's real name allows the consumer to know the exact identity and type of organization of the insurer with clarity and certainty. Real names also provide for efficiency in the regulatory, financial, form and rate filing process. Insurers are therefore strongly encouraged to use their real names.

KRS 304.3-100 (7) requires an insurer to "conduct its business in the name under which the certificate of authority was issued." Therefore, all insurers must do business in the name listed on their certificate of authority. In Kentucky certificates of authority are normally issued in an insurer's real name. If an assumed name is permitted, it is added to the real name on the certificate of authority. **All communications and filings with the Department should use the insurer's entire name, both real and assumed, if any. (e.g. XYZ Insurance Co., Inc. d/b/a ABC Insurance Co., Inc.)**

Some clarification is necessary regarding what an insurer's "real" name is. KRS 365.015 specifies what is to be used as a business' name. According to this section, the real name of a domestic corporation is the name set forth in its articles of incorporation. The real name of a foreign corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in Kentucky. Corporations, partnerships, and other business entities are forbidden from conducting business in Kentucky under any name other than the real name unless a certificate of assumed name is filed. A certificate of assumed name must be filed with the Office of the Kentucky Secretary of State and with every county clerk where the assumed name will be used.

The Department of Insurance will normally issue a certificate of authority only in a business entity's real name. However, since business may be done under an assumed name if the conditions set out in KRS 365.015 are met, the Department will issue a certificate of authority in an assumed name if sufficient evidence is presented that the insurer has filed a certificate of assumed name with the secretary of state and with each of the county clerks in the Commonwealth. If the insurer's initial certificate of authority is not issued in the assumed name, the insurer may apply to amend its certificate of authority to include the assumed name.

Additionally, the Commissioner may *require* an insurer to do business in an assumed name when a conflict exists with another insurer's name. KRS 304.3-100(6) provides:

"In case of conflict of names between two (2) insurers, or a conflict otherwise prohibited under this section, the commissioner may, after notice to the other insurer, permit (or may require as a condition of the issuance of an original certificate of authority to an applicant insurer) the insurer to use in this state such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict."

The Commissioner will also require the insurer to comply with KRS 365.015 by filing a certificate of assumed name with the secretary of state and the county clerks in this situation.

KRS 304.3-100 (5) prohibits insurers from using a name which "tends to deceive or mislead as to the type of organization of the insurer." The Department has interpreted this section to require stock insurers to comply with KRS 271B.4-010 (1) (a) by including the words "corporation," "incorporated," "company," or "limited" or suitable abbreviations for these words in the company name. Similarly, a mutual insurer should include the word "mutual" in its name.

The Department has also interpreted KRS 304.3-100 (5) to prohibit insurers from using multiple assumed names. The use of multiple assumed names would tend to mislead the public into believing that a single insurer is in fact multiple entities. However, insurers should also be aware of the distinction between product names and insurers' names. Product names (e.g. specific policy types or lines) are not subject to the same restrictions as insurer names. An insurer may use several product names, but may have only one name for itself.

To summarize:

1. An insurer may operate under an assumed name only if the assumed name is reflected on its certificate of authority.
2. The certificate of authority will only be issued or amended to reflect the assumed name if the insurer has complied with KRS 365.015 by properly filing certificates of assumed name with the Kentucky secretary of state and each of the county clerks.
3. The Commissioner may also require an insurer to use an assumed name in the event of a conflict of names between two or more insurers.
4. An insurer's name, either real or assumed, may not be deceptive or misleading and must include correct information regarding the insurer's corporate or mutual status.
5. Finally, an insurer may do business under only one assumed name but may use multiple product names.