



Kentucky requires foreign corporations (i.e., corporations not established under Kentucky law) to obtain a certificate of authority in order to transact business in Kentucky. Increasingly, foreign corporations that have not obtained such a certificate are finding themselves "sandbagged" by debtors who raise the lack of a certificate as a defense in actions on their debts.

Kentucky's statutes provide that, "A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority." KRS 271B.15-020. If a foreign corporation without a certificate of authority brings an action in a Kentucky court, the court may stay the proceeding until it determines whether the foreign corporation was required to have a certificate of authority. Generally, this means that the court will stay the proceeding until it determines whether the foreign corporation has been "transacting business" in

Kentucky. If the court determines that a foreign corporation has been transacting business in Kentucky without a certificate of authority, it may further stay the proceeding until the foreign corporation obtains the certificate. A foreign corporation also may be liable for civil penalties of up to \$500 for each year it transacts business in Kentucky without a certificate of authority.

As noted previously, debtors sometimes take advantage of these statutes to stall efforts by foreign corporations to collect debts in Kentucky courts. In our experience, rather than dismiss the lawsuit, when this defense is raised the court will simply stay the proceeding until the foreign corporation obtains the necessary certificate of authority.

A certificate of authority may be obtained by filing an application with the Secretary of State and paying a \$90.00 fee. In addition, the foreign corporation will be required to establish a registered office and provide the name of a registered agent at that office. Certain corporations, such as C T Corporation System, will serve as the registered office and agent for foreign corporations for a fee. □

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