

**386A.10-040 Effective date -- Application to business trusts -- Application to foreign business trusts.**

- (1) This chapter does not limit, prohibit, or invalidate the existence, acts, or obligations of any common-law trust created or doing business in this Commonwealth before, on, or after July 12, 2012.
- (2) A business trust formed under any statute of this Commonwealth prior to July 12, 2012, until or unless it becomes a statutory trust under this chapter, shall continue to be governed by the provisions of the statute under which it was formed.
- (3) The enactment of this chapter shall not impair, or otherwise affect, the organization or the continued existence of a business trust existing on July 12, 2012.
- (4) This chapter governs only:
  - (a) A statutory trust formed on or after July 12, 2012; and
  - (b) A business trust formed before July 12, 2012, which elects, in the manner provided in its governing instrument or by law for amending the governing instrument, to be subject to this chapter.
- (5) A business trust formed under any statute or pursuant to the common law of this Commonwealth prior to July 12, 2012, may elect to become subject to this chapter by a consent sufficient to amend the declaration of trust or in the absence thereof by the unanimous consent of the beneficial owners. Thereafter, the business trust shall file an amended and restated certificate of trust which complies with KRS 386A.2-010 and that further sets forth:
  - (a) The name of the business trust as set forth on any declaration of trust filed pursuant to KRS 386.420 or predecessor law;
  - (b) The date of filing of any declaration of trust filed pursuant to KRS 386.420 or predecessor law;
  - (c) An affirmative election by the business trust to be subject to this chapter; and
  - (d) An affirmative statement that the election was approved as required by this subsection.
- (6) A business or statutory trust formed in a jurisdiction other than the Commonwealth of Kentucky may elect to be subject to this chapter by a consent sufficient to amend the declaration of trust and trust agreement or in the absence thereof by the unanimous consent of the beneficial owners. Thereafter, the business or statutory trust shall file an amended and restated certificate of trust which complies with KRS 386A.2-010 and further sets forth:
  - (a) The name of the business or statutory trust;
  - (b) The previous jurisdiction of organization;
  - (c) An affirmative election by the trust to be subject to this chapter; and
  - (d) A statement that the election to be governed by this chapter is effective under the law and agreements governing the trust prior to becoming subject to this chapter.
- (7) An election pursuant to subsection (5) or (6) of this section is effective upon the

effective time and date of the amended and restated certificate of trust as provided in KRS 14A.2-070.

**Effective:** July 12, 2012

**History:** Created 2012 Ky. Acts ch. 81, sec. 76, effective July 12, 2012.