

### **304.33-030 Definitions.**

For the purposes of this subtitle:

- (1) "Agent" means all persons who have collected or are holding premiums or other assets of the insurer, including but not limited to brokers, intermediaries, managing general agents, underwriting managers, and reinsurance managers, and any other persons who have entered into a fiduciary relationship with the insurer subject to delinquency proceedings, including but not limited to persons holding licenses under Subtitles 9, 32, 38, and 43 of KRS Chapter 304;
- (2) "Commissioner" means the commissioner of the Department of Insurance of this state;
- (3) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires;
- (4) "Insurer" has the meaning defined in Subtitle 1 of this chapter. For purposes of this subtitle, all other persons included under KRS 304.33-020 shall be deemed to be insurers;
- (5) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under KRS 304.33-110 to 304.33-130, inclusive;
- (6) "State" has the meaning defined in Subtitle 1 of this chapter;
- (7) "Foreign country" means territory not in any state;
- (8) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States;
- (9) "Ancillary state" means any state other than a domiciliary state;
- (10) "Reciprocal state" means any state other than this state in which in substance and effect subsection (1) of KRS 304.33-200, subsections (1) and (3) of KRS 304.33-530, KRS 304.33-540, and KRS 304.33-560 to 304.33-590, inclusive, are in force, and in which provisions are in force requiring that the commissioner be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;
- (11) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby, except as otherwise expressly provided in this subtitle. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets;

- (12) "Reinsurance intermediary" means any person who acts as a broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder, or acts as an agent in accepting any reinsurance contract or binder on behalf of an insurer;
- (13) "Court" means the Franklin Circuit Court;
- (14) "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer;
- (15) "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one (1) or more limited classes of persons, but not including any claim secured by general assets;
- (16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets including, but not limited to, claims of setoff, counterclaim, or recoupment against obligations to pay premiums to the insurer. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated;
- (17) "Premium" has the meaning set forth in Subtitle 14 of this chapter;
- (18) "Insolvency" means that the insurer is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of:
  - (a) Any capital and surplus required by law to be constantly maintained; or
  - (b) Its authorized and issued capital stock. For purposes of this subsection, "assets" includes one-half (1/2) of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were one hundred percent (100%) collection of an assessment at the rate of ten (10) mills;
- (19) "Fair consideration" is given for property or an obligation:
  - (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or
  - (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained;
- (20) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent;
- (21) "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor;
- (22) "Doing business" has the meaning designated in Subtitle 1 of this chapter; and

(23) "Guaranty association" means the Kentucky Insurance Guaranty Association, the Kentucky Life and Health Insurance Guaranty Association and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in, or hereafter created by the legislature of, any other state.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1429, effective July 15, 2010. -- Amended 1990 Ky. Acts ch. 422, sec. 3, effective July 13, 1990. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 3, effective June 18, 1970.