

### **304.33-140 Grounds for rehabilitation.**

- (1) The commissioner may apply by verified petition to the court for an order directing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:
  - (a) Any ground on which the commissioner may apply for an order of liquidation under KRS 304.33-190, whenever the commissioner believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to creditors of the insurer or to the public;
  - (b) That the commissioner has reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer, that if established would endanger assets in an amount threatening the solvency of the insurer;
  - (c) That any one (1) of the following circumstances has occurred and the commissioner has reasonable cause to believe that the insurer is insolvent or that assets are endangered in an amount threatening the solvency of the insurer:
    1. That information coming into the commissioner's possession has disclosed substantial and not adequately explained discrepancies between the insurer's records and the most recent annual report or other official company reports;
    2. That the insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found by the commissioner after notice and hearing to be dishonest or untrustworthy in a way affecting the insurer's business;
    3. That control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one (1) or more persons found by the commissioner after notice and hearing to be dishonest or untrustworthy;
    4. That any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all his or her influence on management;
    5. That the insurer has refused to submit its books, accounts, documents, or other records to the reasonable examination or inspection of the commissioner or the commissioner's authorized representative;
  - (d) That the insurer is or is about to become insolvent;
  - (e) That the insurer is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and

then unreasonably delaying payment of or failing to pay the agreed upon settlements;

- (f) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;
  - (g) That within the previous twelve (12) months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full;
  - (h) That without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;
  - (i) That the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this subtitle, and that such appointment has been made or is imminent, and that such appointment might oust the courts of this state of jurisdiction or prejudice orderly delinquency proceedings under this subtitle;
  - (j) That within the previous year the insurer has willfully violated its charter or articles of incorporation or any insurance law or regulation of this state, or having become aware within the previous year of an unintentional violation has failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent future violations;
  - (k) That the directors of the insurer are deadlocked in the management of the insurer's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors or its policyholders is threatened by reason thereof;
  - (l) That the insurer has failed to file its annual report or other report within the time allowed by law, and after written demand by the commissioner has failed to give an adequate explanation immediately; and
  - (m) That two-thirds (2/3) of the board of directors, or the holders of a majority of the shares entitled to vote, or a majority of members or policyholders of an insurer subject to control by its members or policyholders, consent to rehabilitation under this subtitle.
- (2) Upon the issuance of an order directing the commissioner to rehabilitate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the rehabilitation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the rehabilitation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1439, effective July 15, 2010. -- Amended 1990 Ky. Acts ch. 422, sec. 9, effective July 13, 1990. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 14, effective June 18, 1970.