

### **304.24-300 Borrowed surplus.**

- (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if public offering and sale is made of the loan securities, the insurer may pay the reasonable costs thereof approved by the commissioner.
- (2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid. A surplus note shall be reported as surplus and not as debt only if the surplus note contains the following provisions:
  - (a) Subordination to policyholder;
  - (b) Subordination to claimant and beneficiary claims;
  - (c) Subordination to all other classes of creditors other than surplus note holders; and
  - (d) Interest payments and principal repayments require prior approval of the state of domicile.
- (3) Any such loan shall be subject to the commissioner's approval. The insurer shall in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he or she finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.
- (4) Any such loan or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made unless approved in advance by the commissioner.
- (5) This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, nor to loans secured by pledge or mortgage of assets.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1339, effective July 15, 2010. -- Amended 2004 Ky. Acts ch. 24, sec. 30, effective July 13, 2004. -- Created 1970 Ky. Acts ch. 301, subtit. 24, sec. 30, effective June 18, 1970.