

304.33-240 Powers of liquidator.

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. The liquidator may:

- (1) Appoint a special deputy to act for him or her under this subtitle, and, subject to the court's approval, determine his or her compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
- (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he or she deems necessary to assist in the liquidation;
- (3) Fix the compensation of persons under subsection (2) of this section, subject to the control of the court;
- (4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the Department of Insurance out of the first available moneys of the insurer;
- (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his or her testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, record, or other documents which he or she deems relevant to the inquiry;
- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions to marshal the assets of the insurer; forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise, or assign for purposes of collection, subject to court approval and upon such terms and conditions as the liquidator deems best, any disputed claims; and pursue any creditor's remedies available to enforce his or her claims. In lieu of collecting funds representing unearned premium of a policyholder which are in the possession of the insurer's agent with respect to the kinds of direct insurance protected under KRS 304.36-030, the liquidator may authorize the use of such funds to replace the insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the agent of appropriate notice of such replacement of the insurance coverage with an insurer within sixty (60) days after the date of the liquidation order;
- (7) Audit the books and records of all agents of the insurer insofar as these records relate to the business activities of the insurer;
- (8) Conduct public and private sales of the property of the insurer in a manner prescribed by the court;

- (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under KRS 304.33-430;
- (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds ten thousand dollars (\$10,000) shall be concluded without express permission of the court. The liquidator also may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the county clerk for the county in which the property is located a certified copy of the order appointing him or her;
- (11) Borrow money, subject to court approval, on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
- (12) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party, except the liquidator shall not disavow, reject, or repudiate a federal home loan bank security agreement or any pledge agreement, security agreement, collateral agreement, guarantee agreement, or other similar arrangement or credit enhancement relating to a security agreement to which a federal home loan bank is a party;
- (13) Continue to prosecute and institute in the name of the insurer or in his or her own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under KRS 304.33-220, he or she may apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;
- (14) Prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person;
- (15) Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation;
- (16) Deposit in one (1) or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;
- (17) File any necessary documents for record in the office of any county clerk or record office in this state or elsewhere where property of the insurer is located;
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator;

- (19) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within KRS 304.33-290 to 304.33-310, inclusive;
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this subtitle; and
- (23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him or her, nor does it exclude his or her right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 61, sec. 5, effective July 14, 2022. -- Amended 2010 Ky. Acts ch. 24, sec. 1446, effective July 15, 2010. -- Amended 1990 Ky. Acts ch. 422, sec. 16, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 384, sec. 471, effective June 17, 1978. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 24, effective June 18, 1970.