

### **304.33-290 Fraudulent transfer prior to petition -- Exceptions.**

- (1) Definition and effect. Except as provided in subsection (5) of this section, every transfer made or suffered and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under this subtitle shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this subtitle, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value; and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.
- (2) Perfection of transfers.
  - (a) Personal property. A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of KRS 304.33-310.
  - (b) Real property. A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
  - (c) Equitable liens. A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.
  - (d) Transfer not perfected prior to petition. Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.
  - (e) Actual creditors unnecessary. This subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.
- (3) Fraudulent reinsurance transactions. Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:
  - (a) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

- (b) Any part of the transaction took place within one (1) year prior to the date of filing of the petition through which the receivership was commenced.
- (4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefor and shall be bound to account to the liquidator.
- (5) (a) Except as provided in paragraph (b) of this subsection, any transfer of, and any obligation to transfer, money or other property from an insurer-member to the federal home loan bank under a federal home loan bank security, pledge, collateral, or guarantee agreement, or other similar arrangement or credit enhancement, shall not be deemed fraudulent and shall not be avoided by the receiver under subsection (1) of this section if the agreement, arrangement, or enhancement is:
  - 1. Made in the ordinary course of business; and
  - 2. Made in compliance with the applicable federal home loan bank agreement.
- (b) A transfer may be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if the transfer is made with the intent to hinder, delay, or defraud:
  - 1. An insurer-member;
  - 2. The receiver of the insurer-member; or
  - 3. Existing or future creditors of the insurer-member.

**Effective:** July 14, 2022

**History:** Amended 2022 Ky. Acts ch. 61, sec. 6, effective July 14, 2022. -- Amended 1990 Ky. Acts ch. 422, sec. 20, effective July 13, 1990. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 29, effective June 18, 1970.