

808 KAR 14:010. Record retention.

RELATES TO: KRS Chapter 286, 12 C.F.R. Part 749

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.3-375, 286.4-610(1), (3), 286.6-070, 286.7-530, 286.8-140(1), 286.8-160(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.3-375(4) requires the commissioner to promulgate an administrative regulation classifying all records kept by a bank and prescribing the time period for which records of each class shall be retained. KRS 286.1-020(1) and 286.6-070 authorize the commissioner to promulgate administrative regulations for the proper conduct and regulation of credit unions. KRS 286.8-160(2) authorizes the commissioner to promulgate administrative regulations establishing preservation requirements for records governed by KRS Chapter 286.8. KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.7-530 authorizes the commissioner to promulgate administrative regulations for the proper conduct of the industrial loan corporations licensed under KRS Chapter 286.7. This administrative regulation establishes recordkeeping requirements for department licensees.

Section 1. Definition. "Record" means any books of account or other books, journals, ledgers, statements, instruments, documents, files, messages, writings, or other internal data or information, made or received by a financial institution in the regular course of the financial institution's business or otherwise, regardless of the mode in which it is recorded.

Section 2. Preservation Period for Records.

(1) Unless a longer period is required by federal law or federal regulation, a Kentucky Revised Statute, or an administrative regulation, licensees shall maintain records in accordance with the Record Retention Schedule.

(2) Credit Unions' Record Retention Schedule.

(a) Unless a longer retention period is required by subsection (b) of this section or other law, credit unions shall comply with the records retention requirements in Appendix A to 12 C.F.R. Part 749.

(b) A credit union shall retain all records for at least twenty-four (24) months after the close of the calendar year during which the record was generated.

(c) Credit unions shall maintain a vital records preservation program in compliance with 12 C.F.R. Part 749.

Section 3. Form of Records. All records required to be retained by licensees shall be:

(1) Current and accurate;

(2) Retained in a format capable of being transmitted or reproduced; and

(3) Immediately accessible and retrievable for examination upon request by the commissioner or any person designated by the commissioner for examination, investigation, or other authorized purposes.

Section 4. Loan Licensee Records.

(1) Industrial loan and consumer loan licensees shall keep and maintain the following specific accounting records:

(a) Loan register or its equivalent record, which shall be the book of original entry and permanent record, and shall properly identify each account by:

1. Number;

2. Date of loan; and

3. Amount of loan;

(b) An individual account ledger card with borrowers that shall:

1. Show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of interest, terms of repayment, the nature of

the security, if any, for the loan, and the dates of receipt and payment of recording fees together with the amount;

2. Provide separate columns for payments of principal;

3. Be kept in a manner that clearly shows the balance due on principal;

4. Have all payments credited promptly;

5. Have loan or payment cards for consumer loans, industrial loans, and sales finance loans maintained in separate files at all times; and

6. If an error is made on the individual account ledger or card, be appropriately corrected without erasures;

(c) An appropriate filing system, which shall contain all the current evidences of indebtedness or security that have been signed by the borrower; and

(d) An individual index record that shall be maintained for every endorser, accommodation comaker, or surety, except a spouse listed on the record of the borrower.

(2) If a note has been reduced to judgment by a consumer loan company, the face of the account ledger or card shall show the:

(a) Name of court;

(b) Date of judgment;

(c) Amount of judgment;

(d) Court costs; and

(e) Defendant against whom judgment obtained.

(3) In case of the sale of mortgaged property by a consumer loan company:

(a) The face of the account ledger or card shall show:

1. How possession of security was obtained, and when; and

2. When and how sold (public or private sale), including:

a. If all the security is sold; and

b. Proper identification of all credits from proceeds of sale;

(b) The files of the licensee shall include:

1. A copy of the notice of the sale;

2. A copy of the statement of final account, the original of which shall have been sent to the borrower after the sale; and

3. If the property is abandoned and the address of the borrower is uncertain or unknown, notice of sale and statement of final accounting sent to the last known address by certified mail or registered mail, return receipt requested.

Section 5. Cessation of Business. At least ten (10) days prior to the cessation of business, a mortgage loan licensee shall submit a completed Notification of Cessation of Business, Location of Physical Records and Records of Custodian Disclosure. The information in the disclosure shall be kept current for at least as established in the Mortgage Licensee Record Retention Schedule.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "The Record Retention Schedule", July 1, 2006;

(b) The "Notification of Cessation of Business, Location of Physical Records and Records of Custodian Disclosure", 08/2010; and

(c) "Mortgage Licensee Record Retention Schedule", March 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(45 Ky.R. 2275, 2912; eff. 5-3-2019; TAm eff. 12-3-2019.)