

286.3-690 Cease and desist orders -- Orders of suspension or removal from office -- Appeal -- Enforcement of orders.

- (1) If the commissioner has knowledge or reasonable cause to believe that any bank or trust company, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank or trust company has engaged in violations of law, or charter, or administrative regulation promulgated by the department, or in unsafe or unsound business practices, the commissioner may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to alleged violations or practices, and shall fix the time and place at which an administrative hearing shall be held to determine whether an order to cease and desist should issue against the bank, trust company, director, officer, employee, agent, or other person. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) Unless the party or parties so served shall appear at the hearing personally or by a duly-authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order.
- (3) If the parties consent, or if upon the record made at the hearing the commissioner shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the commissioner may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person an order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.
- (4) If the commissioner shall determine that the violation or practice, as specified in the notice of charges pursuant to subsection (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or is likely to otherwise seriously prejudice the interests of its depositors or investors, the commissioner may issue an emergency order pursuant to KRS 13B.125 requiring the bank or trust company, director, officer, employee, agent, or other person to cease and desist from any violation or practice.
- (5) A cease and desist order or an emergency cease and desist order shall become effective upon service upon the bank or trust company. Unless set aside, limited or suspended, as provided by subsection (6) of this section, a cease and desist order shall remain effective and enforceable pending completion of an administrative hearing conducted in accordance with KRS Chapter 13B.
- (6) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court for the county in which the bank is located, or the Circuit Court of Franklin County, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of the administrative hearing, and the court shall have jurisdiction to issue an injunction.
- (7) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the commissioner may apply to the Circuit Court for the county in which the bank or

trust company is located, or the Circuit Court of Franklin County, for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.

- (8) If the commissioner shall determine that any officer or director of a bank or trust company has committed any violation of law, of an administrative regulation, or of a cease and desist order which has become final, or has engaged in or participated in any unsafe or unsound practice in connection with the bank or trust company, or has committed or engaged in any act, omission, or practice which constitutes a breach of his or her fiduciary duty as officer or director, and the commissioner determines that the bank or trust company has suffered or will probably suffer substantial financial loss or other damages or that the interests of its depositors or investors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of intention to remove him or her from office. The violation, practice, or breach shall be one (1) involving personal dishonesty on the part of the director or officer, or one (1) which demonstrates a willful or continuing disregard for the safety or soundness of the bank. The written notice shall serve to suspend the officer or director from office. The suspension shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by subsection (10) of this section, shall remain in effect pending the completion of the administrative hearing under subsection (9) of this section. The resignation of an officer or director from the bank shall not prohibit the commissioner from pursuing an action for removal of the officer or director.
- (9) A notice of intention to remove an officer or director from office shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which an administrative hearing shall be held in accordance with KRS Chapter 13B.
- (10) Within ten (10) days after an officer or director has been suspended from office, the officer or director may apply to the Circuit Court for the county in which the bank or trust company is located for a stay of the suspension pending the completion of the administrative hearing pursuant to the notice served upon the officer or director, and the court shall have jurisdiction to grant the stay.
- (11) The bank, trust company, or person assessed shall be afforded an opportunity for an administrative hearing upon request made to the commissioner within ten (10) days after issuance of the assessment notice. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (12) Any person aggrieved by a final order of the commissioner under subsections (9) or (11) of this section may obtain a review of the order by filing in the Circuit Court for the county in which the bank or trust company is located a petition of appeal in accordance with KRS Chapter 13B.
- (13) The commissioner may apply to the Circuit Court for the county in which the bank or trust company is located for an injunction to enforce any final order issued under subsection (9) of this section or any assessment made under subsection (11) of this section, and it shall be the duty of the court to issue the injunction.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 646, effective July 15, 2010. -- Amended 1996 Ky. Acts ch. 318, sec. 214, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 77, sec. 7. -- Amended 1984 Ky. Acts ch. 324, sec. 38, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 251, sec. 16, effective April 1, 1982. -- Created 1970 Ky. Acts ch. 209, sec. 9, effective June 18, 1970.

Formerly codified as KRS 287.690.

Legislative Research Commission Note (7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286.