

**304.2-230 Conduct of examination -- Immunity for examiners -- Access to records -- Corrections -- Penalty.**

- (1) Whenever the commissioner determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ other guidelines or procedures as the commissioner deems appropriate.
- (2) (a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination. This subsection shall not be construed to automatically preclude an examiner from being:
  1. A policyholder or claimant under an insurance policy;
  2. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
  3. An investment owner in shares of regulated diversified investment companies; or
  4. A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.
- (b) Notwithstanding the requirements of paragraph (a) of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though these persons may from time to time be similarly employed or retained by persons subject to examination.
- (3) Any person performing an examination of an insurer on behalf of, and as called by, the commissioner shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner or any assistant or contractor arising out of, or by reason of, their duties or employment. Nothing in this subsection shall be construed to hold the examiner or any assistant or contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner, any assistant, or contractor.
- (4) The commissioner shall conduct such examination in an expeditious, fair and impartial manner.
- (5) Upon any such examination the commissioner, or the examiner if specifically so authorized in writing by the commissioner, shall have power to issue subpoenas, administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

- (6) Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.
- (7) Neither the commissioner nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document or file.
- (8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section is guilty of a violation of this code.
- (9) The commissioner may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action. The commissioner may use and, if appropriate, may make public any final or preliminary examination report, any examiner's workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate. Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any such documents.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 940, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 152, sec. 2, effective July 15, 2008. -- Created 1970 Ky. Acts ch. 301, subtit. 2, sec. 23, effective June 18, 1970.