

**304.7-413 Permitted acquisitions -- Loan-to-value ratio -- Exemption for certain mortgage loans and credit lease transactions -- Real estate -- Ratios relating to aggregate amount of investments.**

- (1) (a) Subject to the limitations of KRS 304.7-403, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:
1. Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
  2. Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be no greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or
  3. Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph 1. or 2. of this paragraph.
- (b) For purposes of paragraph (a) of this subsection, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.
- (c) A mortgage loan that is held by an insurer under KRS 304.7-014(7) or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.

- (d) Subject to the limitations of KRS 304.7-403, credit lease transactions that do not qualify for investment under KRS 304.7-405 with the following characteristics shall be exempt from the provisions of paragraph (a) of this subsection:
  - 1. The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;
  - 2. The lease payments cover or exceed the total debt service over the life of the loan;
  - 3. A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;
  - 4. The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;
  - 5. The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and
  - 6. There is a perfected assignment of the rents due in accordance with the lease to or for the benefit of the insurer.
- (2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program in which case the real estate shall be deemed to be income producing.
- (b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (4)(b) and (c) of this section.
- (3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations:
  - 1. Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) of this section and is so qualified by the insurer;
  - 2. The real estate acquired under this subsection may be subject to

one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraph (d) of subsection (4) of this section; and

3. For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an accident and health insurer or its insured. An insurer may acquire real estate used for these purposes under subsection (2) of this section.
- (4) (a) An insurer shall not acquire an investment under subsection (1) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) of this section would exceed:
1. One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;
  2. One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or
  3. Two percent (2%) of its admitted assets in construction loans in the aggregate.
- (b) An insurer shall not acquire an investment under subsection (2) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) of this section plus the guarantees then outstanding would exceed:
1. One percent (1%) of its admitted assets in one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or
  2. Fifteen percent (15%) of its admitted assets in the aggregate, but not more than five percent (5%) of its admitted assets as to properties that are to be improved or developed.
- (c) An insurer shall not acquire an investment under subsection (1) or (2) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) and (2) of this section plus the guarantees then outstanding would exceed forty-five percent (45%) of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent (30%) of its admitted assets if:
1. This increased amount is invested only in residential mortgage

- loans;
2. The insurer has no more than ten percent (10%) of its admitted assets invested in mortgage loans other than residential mortgage loans;
  3. The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent (60%) at the time the mortgage loan is qualified under this increased authority, and the fair market value is supported by an appraisal no more than two (2) years old, prepared by an independent appraiser;
  4. A single mortgage loan qualified under this increased authority shall not exceed one-half of one percent (0.5%) of its admitted assets;
  5. The insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and
  6. The insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.
- (d) The limitations of KRS 304.7-403 shall not apply to an insurer's acquisition of real estate under subsection (3) of this section. An insurer shall not acquire real estate under subsection (3) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (3) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (3) of this section.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1017, effective July 15, 2010. -- Created 2000 Ky. Acts ch. 388, sec. 13, effective July 14, 2000.