

251.400 Powers and duties of board upon failure involving licensed grain dealer or licensed grain warehouse operator -- When claimant deemed to have assigned all rights, title, and interest to the board.

- (1) When the board determines there has been a failure involving a licensed grain dealer or licensed grain warehouse operator, the board shall have the authority to:
 - (a) Take receivership of any grain on the licensee's premises to ensure that it is not destroyed, lost, stolen, or otherwise disposed of;
 - (b) Sell the grain and place the proceeds in escrow for the benefit of the owners, or for the benefits of claimants, when the identities of those persons have been identified;
 - (c) Establish a priority lien on any grain or other assets that remain in the licensee's possession, custody, or control;
 - (d) Secure and take possession of any grains or other commodities in the possession, custody, or control of the failed grain dealer or grain warehouse operator for the purpose of using it to cover outstanding storage obligations. If there is insufficient grain to cover outstanding shortage obligations, the board shall determine each depositor's pro rata share of the value of the remaining grain. Any remaining deficiency shall be considered a claim of the producer or depositor against the fund, if applicable. Each grade of grain shall be treated separately for the purpose of covering outstanding storage obligations and calculating claims against the fund;
 - (e) Commence action upon the surety bond, certificate of deposit, letter of credit, or temporary surety as required by KRS 251.365. The board may commence action against both the licensee and the surety or other financial institution in the Franklin Circuit Court or a Circuit Court in the county where the grain is located;
 - (f) Deposit into the fund any remaining assets of the failed grain dealer or grain warehouse operator for the purpose of using those assets to pay claimants;
 - (g) Establish a period of time, not less than thirty (30) days and not greater than one (1) year, for potential claimants to file their claims with supporting documentation;
 - (h) Make a public announcement of the procedure and deadline for potential claimants to file their claims;
 - (i) Examine timely filed claims and make such investigation as may be necessary for the board to determine whether a claim is a valid claim;
 - (j) Determine which of the claims that were submitted in advance of the deadline are valid claims;
 - (k) Assign to each valid claim an initial value computed as a percentage of the value of the grain on the date when it was delivered by the claimant to the licensee, relying on the value established for that grain by the Chicago Board of Trade on the date of delivery. If there is no price information from the Chicago Board of Trade for that grain on that date, then the board shall rely on price information from another exchange in the United States or Canada. If

there is no price information from any exchange in the United States or Canada for that grain on that date, the board shall determine an alternative method for determining a value for that grain on that date;

- (l) Compute claim values by applying these percentages to each valid claim's initial value:
 1. One hundred percent (100%), for valid claims that are evidenced by a grain warehouse receipt issued by a federally licensed warehouse; or
 2. A minimum of ninety percent (90%), for all other valid claims; and
- (m) Notify each claimant in writing of the board's determination as to:
 1. The validity of the claim;
 2. The value of the grain claimed by the claimant;
 3. The amount and percent of value that will be reimbursed by the fund; and
 4. The claimant's right to request a hearing on his or her claim within thirty (30) days of the claimant's receipt of the written notification.
- (2) The board shall not approve for payment from the fund any claims with respect to grains that are not fund-covered grains.
- (3) The board shall not compute a claim's value in reliance on the price or other terms of agreement between a claimant and a licensee.
- (4) If a producer or other depositor fails to file a claim within the time announced by the board, then the board and the fund shall not be liable to that depositor.
- (5) If the board fails to commence action against the surety bond, certificate of deposit, letter of credit, or temporary surety that KRS 251.365 required the licensee to obtain within thirty (30) days of a depositor making a written demand that the board commence action, then the depositor shall have a right of action against the licensee to recover damages suffered by reason of the licensee's failure. The depositor shall give the board immediate written notice of the commencement of such action.
- (6) The board shall deny payment from the fund to a claimant when the board determines that the claimant:
 - (a) Elected to opt out of coverage, as permitted by KRS 251.390; or
 - (b) Engaged in conduct or practices which substantially contributed to the claimant's financial loss.
- (7) A claimant who accepts payment from the fund shall be deemed to have assigned to the board all of the claimant's rights, title, and interest in the grain and in any judgment with respect to the grain. The board shall have the authority to initiate or maintain any civil action it deems necessary to compel a licensee or a former licensee to repay to the fund any sums disbursed therefrom in relation to a claim.

Effective: August 1, 2019

History: Created 2019 Ky. Acts ch. 88, sec. 16, effective August 1, 2019.