

40-229a. Security deposits; deposit with financial institution; custodian and arrangements acceptable to commissioner; release and exchange of assets; income; forms prescribed and provided by commissioner; facsimile, electronic or digital signatures not recognized; inspection of securities on deposit; no liability of state or officers or employees for default of institution; audit of deposits with commissioner; title to assets; redeposit with clearing corporation; security and safety of deposits, rules and regulations.

(a) (1) (A) All cash, securities or other assets, excluding real estate and mortgages, deposited with the commissioner of insurance pursuant to the provisions of the insurance code of the state of Kansas shall be deposited with any Kansas financial institution acceptable to the commissioner through which a custodial or controlled account, a joint custody receipt arrangement or any combination of these or other measures that are acceptable to the commissioner is used.

(B) All such deposits shall be held by such financial institution on behalf of the commissioner in trust for the use and benefit of such company and such company's policyholders and creditors. Such assets shall be released from such deposits only upon written approval of the commissioner.

(C) All income from deposits belong to the depositing organization and shall be paid to it as it becomes available. The commissioner, upon written approval, may direct the financial institution to permit exchange of securities or assets upon deposit of specified substituted securities or assets.

(D) An authorized signature form must be submitted to the commissioner of insurance prior to acceptance of any deposit. Each signature on the authorized signature form must be the original handwritten name of each signee. No copies, facsimiles, electronic or digital signatures will be recognized on this form.

(E) All forms for deposit, withdrawal or exchange shall be prescribed, prepared and furnished by the commissioner and no facsimile signatures shall be used or recognized.

(F) The commissioner or assistant commissioner of insurance or insurance department employee authorized by the commissioner may at any time inspect the securities on deposit in any such financial institution.

(G) Nothing in this act shall be construed to hold the state of Kansas, the commissioner, assistant commissioner or authorized employee liable either personally or officially for any default of such financial institution.

(2) All deposits made with the commissioner shall be audited by the commissioner and the state treasurer not less frequently than once each three years. The commissioner may accept an audit performed by another governmental agency acceptable to the commissioner, in lieu of this audit requirement.

(b) Assets deposited pursuant to this section shall be held by the custodian on behalf of the commissioner as in trust for the use and benefit of the depositing organization. Such assets shall remain the specific property of the organization and shall not be subject to the claim of any third party against the custodian.

(c) The custodian is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102, and amendments thereto, if such clearing corporation is domiciled in the United States. The custodian is authorized to hold such assets through the federal reserve bank book-entry system.

(d) The commissioner shall adopt rules and regulations to establish requirements relating to deposits under this section appropriate to assure the security and safety of such deposits, including, but not limited to, the following:

- (1) Capital and surplus of the custodian;
- (2) title in which deposited assets are held;
- (3) records to be kept by the custodian and the commissioner's access thereto;
- (4) periodic reports by the custodian to the commissioner;
- (5) responsibility of the custodian to indemnify the depositor for loss of deposited assets;
- (6) withdrawal or exchange of deposited assets; and
- (7) authority of the commissioner to terminate the deposit if the condition of the custodian should threaten the security of the deposited assets.

(e) As used in this section:

- (1) "Commissioner" means the commissioner of insurance; and
- (2) "financial institution" means a federal home loan bank, a savings and loan association and savings bank organized under the laws of the United States or another state, a national bank, state bank or trust company, which have main or branch offices in this state, shall at all times during which such federal home loan bank, savings and loan association, savings bank, national bank, state bank or trust company acts as a custodian be:

(A) No less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing standards for, and assessing, the institution's solvency;

(B) regulated by either state or federal banking laws, the federal home loan bank act, as amended or is a member of the federal reserve system; and

(C) legally qualified to accept custody of securities.

(3) "Main office" and "branch" shall have the meanings ascribed to such terms in K.S.A. 9-1408, and amendments thereto.

History: L. 1996, ch. 25, § 1; L. 1997, ch. 64, § 1; L. 2007, ch. 45, § 1; L. 2009, ch. 83, § 22; L. 2014, ch. 15, § 1; July 1.