

### **292.310 Definitions for chapter.**

When used in this chapter, unless the context otherwise requires:

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include an agent, issuer, bank, savings institution, or trust company;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Commissioner" means the commissioner of the Department of Financial Institutions or any individual employee of the Department of Financial Institutions expressly designated by statute or order of the commissioner to act in the commissioner's place;
- (5) "Covered adviser" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is or upon completion of a transaction will be a covered security under Section 18(b) of the Securities Act of 1933, 15 U.S.C. sec. 77r(b), or rules or regulations promulgated thereunder;
- (7) "Department" means the Department of Financial Institutions of the Commonwealth of Kentucky;
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) "Insolvent" means either a person's liabilities exceed the person's assets, or the person cannot meet obligations as they mature;
- (11) "Investment adviser" means any person who, for compensation, directly or indirectly, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
  - (a) A bank, savings institution, or trust company;
  - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
  - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
  - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
  - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);

- (f) An investment adviser representative or a person excluded from the definition of investment adviser representative;
  - (g) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2(a)(11);
  - (h) A covered adviser; or
  - (i) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;
- (12) "Investment adviser representative" means an individual employed by or associated with an investment adviser or covered adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:
- (a) Performs only clerical or ministerial acts;
  - (b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
  - (c) Is employed by or associated with a covered adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a, and is either:
    - 1. An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a; or
    - 2. Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2(a)(25); or
  - (d) Is excluded by the commissioner pursuant to order or regulation;
- (13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right, whether whole or fractional, who creates fractional interests therein for the purpose of distribution;
- (14) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

- (15) "Person" means an individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (16) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (17) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (18) "Securities Act of 1933," 15 U.S.C. secs. 77a et seq., "Securities Exchange Act of 1934," 15 U.S.C. secs. 78a et seq., "Public Utility Holding Company Act of 1935," 15 U.S.C. secs. 79 et seq., and "Investment Company Act of 1940," 15 U.S.C. secs. 80a-1 et seq. mean the federal statutes of those names as amended before or after January 1, 1961;
- (19) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (20) "Sign" means with present intent to authenticate or adopt a record to:
  - (a) Execute or adopt a tangible symbol; or
  - (b) Attach or logically associate with the record an electronic symbol, sound, or process;
- (21) "State" means any state, commonwealth, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;

- (22) "Life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" does not include:
- (a) Any transaction between an owner and a life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
  - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a life settlement provider to another life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
  - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
  - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (23) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 858, effective July 15, 2010; and ch. 82, sec. 1, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 149, sec. 233, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 58, sec. 2, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 157, sec. 12, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 20, sec. 1, effective July 15, 1998; and ch. 341, sec. 42. -- Amended 1994 Ky. Acts ch. 165, sec. 2, effective July 15, 1994. -- Amended 1984 Ky. Acts ch. 388, sec. 12, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 346, sec. 1, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 368, sec. 1, effective July 15, 1980. -- Amended 1976 Ky. Acts ch. 12, sec. 2, effective March 1, 1976; and ch. 248, sec. 1, effective March 30, 1976. -- Amended 1972 Ky. Acts ch. 265, sec. 1. -- Amended 1968 Ky. Acts ch. 56, sec. 1. -- Amended 1966 Ky. Acts ch. 255, sec. 238. -- Created 1960 Ky. Acts ch. 110, sec. 9, effective January 1, 1961.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 82, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (7/15/2010).** A reference to the "executive director" of financial institutions in subsection (12) of this section, as amended by 2010 Ky. Acts ch. 82, sec. 1, has been changed in codification to the "commissioner" of financial institutions to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Orders 2009-535 and 2009-1086 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. This change was made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.

**Legislative Research Commission Note (7/15/2008).** 2008 Ky. Acts ch. 32 intended to change all existing references in the KRS from "viatical settlements" to "life settlements" and from "viator" to "owner." Reference to "viatical settlement" and to "viator" in this section were overlooked during the bill drafting process. The Reviser of Statutes has made these changes upon the authority of KRS 7.136(1)(h).

**Legislative Research Commission Note (6/20/2005).** Under the authority of KRS 7.136(1)(h), during codification a manifest clerical or typographical error occurring

in 2005 Ky. Acts ch. 58, sec. 2(18) has been corrected. It is clear from the context and legislative history of the Act that a comma should appear after the words "viatical settlement investment."