

CHAPTER 44**(HB 62)**

AN ACT relating to filing deeds in lieu of foreclosure in the county clerk's office.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 382.110 is amended to read as follows:

- (1) All deeds, mortgages and other instruments required by law to be recorded to be effectual against purchasers without notice, or creditors, shall be recorded in the county clerk's office of the county in which the property conveyed, or the greater part thereof, is located.
- (2) No county clerk or deputy county clerk shall admit to record any deed of conveyance of any interest in real property equal to or greater than a life estate, unless the deed plainly specifies and refers to the next immediate source from which the grantor derived title to the property or the interest conveyed therein.
- (3) An authentic photocopy of any original record may be certified, as a true, complete, unaltered copy of the original record on file by the official public custodian of the record. A certified copy of a document certified by the official public custodian of that document may be submitted for filing in any other filing officer's jurisdiction as though it were the original record. However, no county clerk or deputy county clerk shall accept for filing any original document or certified copy of any document unless the original document and its certified copy conforms to all statutory requirements for filing the document under KRS Chapter 382. The provisions of this subsection shall apply only to a record generated and filed in Kentucky, and only if the certified copy thereof is to be utilized in Kentucky. If the record is a foreign record or a Kentucky record to be filed or utilized in a foreign jurisdiction, then this subsection shall not apply and applicable federal, Kentucky, or foreign law shall apply.
- (4) If the source of title is a deed or other recorded writing, the deed offered for record shall refer to the former deed or writing, and give the office, book and page where recorded, and the date thereof. If the property or interest therein is obtained by inheritance or in any other way than by recorded instrument of writing, the deed offered for record shall state clearly and accurately how and from whom the title thereto was obtained by the grantor.
- (5) If the title to the property or interest conveyed is obtained from two (2) or more sources, the deed offered for record shall plainly specify and refer to each of the sources in the manner provided in subsections (2) and (4), and shall show which part of the property, or interest therein, was obtained from each of the sources.
- (6) No grantor shall lodge for record, and no county clerk or deputy shall receive and permit to be lodged for record, any deed that does not comply with the provisions of this section.
- (7) No clerk or deputy clerk shall be liable to the fine imposed by subsection (1) of KRS 382.990 because of any erroneous or false references in any such deed, nor because of the omission of a reference required by law where it does not appear on the face of such deed that the title to the property or interest conveyed was obtained from more than one (1) source.
- (8) This section does not apply to deeds made by any court commissioner, sheriff or by any officer of court in pursuance of his duty as such officer, nor to any deed or instrument made and acknowledged before March 20, 1928. No deed shall be invalid because it is lodged contrary to the provisions of this section.
- (9) ***A mortgage holder shall file a deed in lieu of foreclosure in the county clerk's office of the county in which the property conveyed, or the greater part thereof, is located, no later than forty-five (45) days after the date the deed in lieu of foreclosure is executed.***

➔Section 2. KRS 382.990 is amended to read as follows:

- (1) Any grantor of a deed or any holder of a note who lodges for record a deed, instrument, or deed assigning a note or a deed of release or an instrument wherein there is a release, and any county clerk or deputy county clerk who receives and permits to be lodged for record any such instrument or deed contrary to the provisions of KRS 382.110, 382.120, 382.290, or 382.360, shall be guilty of a violation; the clerk or deputy who actually receives and files the instrument for record shall incur the penalty, but no clerk or deputy shall be fined because of any false or erroneous statement in the instrument filed.

- (2) Any person who willfully and fraudulently makes affidavit to any statement mentioned in KRS 382.120, which is false, knowing the statement to be false, shall be guilty of a Class A misdemeanor, and in addition shall be liable to any person who may be injured by the making, filing, recording, or use of the affidavit.
- (3) Any person who causes to be recorded in a county clerk's office a deed, deed of trust, or mortgage in violation of KRS 382.330, or fails to file the statement required by KRS 382.380, shall be guilty of a Class A misdemeanor.
- (4) Any county clerk who records a deed or mortgage in violation of KRS 382.330 shall be guilty of a violation.
- (5) Any county clerk who, by himself or deputy, fails to perform any duty enjoined upon him by any of the provisions of KRS 382.110, 382.160, 382.180 to 382.200, 382.210, 382.250, 382.300 to 382.320, 382.360, or 382.370 shall be guilty of a violation.
- (6) Any person who knowingly and intentionally gives a false name or address in any instrument or assignment mentioned in KRS 382.430, shall be guilty of a Class A misdemeanor.
- (7) Any county clerk who fails to perform his duties under KRS 382.430, shall be guilty of a violation.
- (8) Any person who willfully and fraudulently gives a false statement as to the full actual consideration of property or the full estimated value under KRS 382.135, shall be guilty of a Class D felony.
- (9) ***Any mortgage holder that fails to file a deed in lieu of foreclosure pursuant to subsection (9) of Section 1 of this Act shall be guilty of a violation.***

➔Section 3. KRS 142.050 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Deed" means any document, instrument, or writing other than a will and other than a lease or easement, regardless of where made, executed, or delivered, by which any real property in Kentucky, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.
 - (b) "Value" means:
 1. In the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and
 2. In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- (2) A tax upon the grantor named in the deed shall be imposed at the rate of fifty cents (\$0.50) for each \$500 of value or fraction thereof, which value is declared in the deed upon the privilege of transferring title to real property.
- (3)
 - (a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the county clerk shall ascertain and compute the amount of the tax due thereon and shall collect the amount as prerequisite to acceptance of the deed for recordation.
 - (b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the deed.
 - (c) The tax required to be levied by this section shall be collected only once on each transaction and in the county in which the deed is required to be recorded by KRS 382.110(1).
- (4) The county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund.
- (5) The Department of Revenue may prescribe regulations necessary to carry out the purposes of this section.
- (6) Any county clerk who willfully shall record any deed upon which a tax is imposed by this section without collecting the proper amount of tax and certifying the date and amount of collection on the deed as required by this section based on the declared value indicated in the affidavit appended to the deed shall, upon conviction, be fined \$50 for each offense.
- (7) The tax imposed by this section shall not apply to a transfer of title:

- (a) Recorded prior to March 27, 1968;
 - (b) To, in the event of a deed of gift or deed with nominal consideration, or from the United States of America, this state, any city or county within this state, or any instrumentality, agency, or subdivision hereof;
 - (c) Solely in order to provide or release security for a debt or obligation;
 - (d) Which confirms or corrects a deed previously recorded;
 - (e) Between husband and wife, or between former spouses as part of a divorce proceeding;
 - (f) On sale for delinquent taxes or assessments;
 - (g) On partition;
 - (h) Pursuant to:
 - 1. Merger or consolidation between and among corporations, partnerships, limited partnerships, or limited liability companies; or
 - 2. Any conversion of a partnership, limited partnership, corporation, or limited liability company into a partnership, limited partnership, corporation, or limited liability company;
 - (i) Between a subsidiary corporation and its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of either corporation's stock;
 - (j) *1. Under a foreclosure proceeding; or*
2. Pursuant to a voluntary surrender under a mortgage in lieu of a foreclosure proceeding;
 - (k) Between a person and a corporation, partnership, limited partnership or limited liability company in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the transferor of the property in the entity to which the property was transferred, if the transfer was for nominal consideration;
 - (l) Between parent and child or grandparent and grandchild, with only nominal consideration therefor;
 - (m) By a corporation, partnership, limited partnership, or limited liability company to a person as owner or shareholder of the entity, upon dissolution of the entity, in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the person to whom the property was transferred, if the transfer was for nominal consideration;
 - (n) Between a trustee and a successor trustee; and
 - (o) Between a limited liability company and any of its members.
- (8) The tax imposed by subsection (2) of this section shall not apply to transfers to a trustee, to be held in trust, or from a trustee to a beneficiary of the trust if:
- (a) The grantor is the sole beneficiary of the trust;
 - (b) The grantor is a beneficiary of the trust and a direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section; or
 - (c) A direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section.
- (9) As used in this section, "trust" shall have the same definition as contained in KRS 386.800.

Signed by Governor April 11, 2012.