

CHAPTER 93

(HB 396)

AN ACT relating to secured property.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 426 IS CREATED TO READ AS FOLLOWS:

- (1) *In an action otherwise properly brought to enforce a mortgage or lien against real property determined by the court to be vacant and abandoned, a sale of the property shall be ordered expeditiously.*
- (2) *Real property shall be considered vacant and abandoned, for purposes of this section only, if there has been no legal resident or other person legally entitled to occupy the property residing at the property for a period of forty-five (45) or more consecutive days and two (2) or more of the following or similar circumstances which would lead a reasonable person to believe that the property is vacant exist:*
 - (a) *Overgrown or dead vegetation;*
 - (b) *Accumulation of flyers, mail, or trash;*
 - (c) *Disconnected utilities;*
 - (d) *The absence of window coverings or furniture;*
 - (e) *Uncorrected hazardous conditions or vandalism;*
 - (f) *Statements of neighbors, delivery persons, or government employees that the property is vacant.*

Proof of vacancy and abandonment may be offered by affidavit filed at or after the time of filing of the complaint by the plaintiff or other lienholder.

- (3) *If the court makes a finding in the order of sale that the property is vacant and abandoned, the master commissioner shall sell the property within seventy (70) days of the order.*
- (4) *The plaintiff or other mortgage or lienholder in whose favor the judgment and order of sale were entered shall apply for an order confirming the sale within twenty (20) days of the date of the sale and, unless there have been exceptions to the report of the master commissioner, the court shall act on such application not later than the next regularly scheduled civil motion or rule day.*
- (5) *The master commissioner shall make conveyance of the property on the date the court confirms the sale, or as soon thereafter as all costs and fees have been paid by the foreclosing mortgagee or lienholder or as soon as a third-party purchaser has paid the purchase price.*

➔Section 2. KRS 426.525 is amended to read as follows:

Foreclosure of a mortgage is forbidden; provided, however, that this section shall not preclude a mortgagee after default from taking possession of property subject to the mortgage which has been abandoned by the mortgagor, for the purpose of preserving and maintaining the same, harvesting crops, or letting the same, all to the account of the mortgagor; and any reasonable expenses incident thereto including taxes and insurance shall be added to the principal of the mortgage, and secured by it. For the purpose of this section, property shall be deemed to have been abandoned when the mortgagor has moved from the property and when by the nature of the property in question when further neglect or failure to attend will decrease its value. Any right a mortgagee acquires in a tenant's interest in crops raised on shares is inferior to any prior existing lien of the landlord on the tenant's interest. Nothing in this section shall be construed as conflicting with the provisions of KRS 383.110 *or Section 1 of this Act.*

➔Section 3. KRS 517.060 is amended to read as follows:

- (1) A person is guilty of defrauding secured creditors when he destroys, *damages*, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent *either to lower the value of the secured interest or* unlawfully to hinder enforcement of that interest.
- (2) Defrauding secured creditors is a Class A misdemeanor unless the value of the property subject to the security interest is:
 - (a) *Five hundred dollars (\$500) [~~one hundred dollars (\$100)]~~ or more up to ten thousand dollars (\$10,000), in which case it is a Class D felony; or*

(b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.

Signed by Governor April 11, 2012.