

CHAPTER 95**(HB 409)**

AN ACT relating to the disposition of real property.

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

➔Section 1. KRS 381.280 is amended to read as follows:

- (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship or the beneficiary under any insurance policy takes the life of the decedent or victimizes the decedent by the commission of any felony under KRS Chapter 209 and in either circumstance is convicted therefor, the person so convicted forfeits all interest in and to the property of the decedent, including any interest he or she would receive as surviving joint tenant, and the property interest or insurable interest so forfeited descends to the decedent's other heirs-at-law, beneficiaries, or joint tenants, unless otherwise disposed of by the decedent. A judge sentencing a person for a offense that triggers a forfeiture under this section shall inform the defendant of the provisions of this section at sentencing.
- (2) A forfeiture under subsection (1) of this section:
 - (a) Shall not apply in cases involving the commission of any felony under KRS Chapter 209 where the will, deed, or insurance policy was executed prior to January 1, 2012;
 - (b) Shall not apply in cases where the decedent, with knowledge of the person's disqualification, reaffirmed the right of the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship, or insurance policy beneficiary to receive the property by executing a new or modified will or codicil, insurance policy or policy modification, or deed; and
 - (c) Shall not apply in cases of a felony under KRS Chapter 209 committed prior to January 1, 2012.
- (3) If, after the provisions of this section are applied, there are no other heirs-at-law, beneficiaries, or joint tenants of the decedent as to all or part of the interest forfeited, the forfeited interest shall escheat to the state under KRS Chapter 393. The Department of the Treasury shall, after liquidation of the interest, pay the proceeds into the elder and vulnerable adult victims trust fund established in KRS 41.305.

~~{(4) Legal, real estate, and insurance professionals shall make reasonable efforts to advise their clients of the provisions of this section prior to the execution of documents affected by the provisions of this section.}~~

➔Section 2. KRS 286.8-020 is amended to read as follows:

- (1) The following mortgage loan companies and mortgage loan brokers shall be subject to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:
 - (a) Any person duly licensed, chartered, and otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, savings and loan association holding company, service corporation subsidiary of a savings and loan association, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or any wholly owned subsidiary of any such person if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency;
 - (b) Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;

- (d) *Any person other than a natural person, including any affiliate of that person, that makes in the aggregate no more than four (4) mortgage loans within a calendar year with its own funds and secured by residential real property owned by the person making the mortgage loan, provided that the mortgage loan is made without the intent to resell the mortgage loan, and provided that the person does not hold itself out to the public as being primarily in the mortgage loan business;*
- (e) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
- ~~(f)(e)~~ The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
- ~~(g)(f)~~ Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
- ~~(h)(g)~~ A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter or any wholly owned subsidiary of such a consumer loan or finance company or an industrial loan company, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and
- ~~(i)(h)~~ A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.
- (2) The following shall be exempt from the licensing provisions of this subtitle and the examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on grounds satisfactory to the commissioner that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle:
- (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; and
- (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth.
- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)~~(i)(h)~~ or (2)(a) or (b) of this section shall file with the commissioner a written application for a claim of exemption. The commissioner shall approve an application for an exemption that is timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the commissioner on or before December 31 of the same calendar year. A written application for a partial-year exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted.
- (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties each year in order to maintain its exemption.
- (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the Department of Housing and Urban Development shall notify the commissioner, in writing, within ten (10) days after it ceases to be regulated by the United States Department of Housing and Urban Development.
- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), ~~(g)~~, **or (h)** of this section shall not be required to file with the commissioner a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky Department of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky Department of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans from December 1 of the previous calendar year to November 30 of the current calendar year to the commissioner by December 31 of each year on a form prescribed by the commissioner.
- (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:
 - (a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the commissioner; or
 - (b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the commissioner.
- (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who makes a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:
 - (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the commissioner that an examination is necessary;
 - (b) Disclosure requirements of subsection (7) of this section;
 - (c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
 - (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
 - (e) Registration and regulatory requirements of KRS 286.8-255.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.
- (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the commissioner or an examiner of the commissioner the records in its possession or control that are subject to the provisions of this subtitle.
- (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the commissioner or an examiner of the commissioner from interviewing any person regarding any potential violations of this subtitle.
- (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of KRS 286.8-255 shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the commissioner.

➔Section 3. KRS 286.8-290 is amended to read as follows:

- (1) The following mortgage loan originators shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
 - (a) An individual employed by the following institutions and acting on behalf of such institutions:
 - 1. A depository institution;
 - 2. A subsidiary that is:

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- a. Owned and controlled by a depository institution; and
 - b. Regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or
3. An institution regulated by the Farm Credit Administration;
- (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) A natural person who originates a mortgage loan on behalf of an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (d) A natural person who originates a mortgage loan secured by a dwelling that served as the natural person's residence unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;~~and~~
 - (e) *Any natural person including all entities owned in whole or part by that natural person that make no more than four (4) loans each calendar year; and*
 - (f) A person who originates a mortgage loan secured by a dwelling; and
 - 1. Who is exempted by an order of the commissioner; and
 - 2. Whose exemption would not be contrary to the registration requirements of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.
- (2) The following mortgage loan processors shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
- (a) Any natural person exempted in subsection (1) of this section; and
 - (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a), (b), (c), (d), (e), (f),~~or~~ (g), *or (h)* and acting on behalf of such person.
- (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan originator or mortgage loan processor shall impede the commissioner or an examiner of the commissioner from interviewing any person regarding any potential violations of this subtitle.
- (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan originator and mortgage loan processor shall make available and grant access to the commissioner or an examiner of the commissioner the records in the originator's or processor's possession or control that are subject to the provisions of this subtitle.

Signed by Governor April 11, 2012.