

1 AN ACT relating to liens on real property.

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

3 ➔Section 1. KRS 382.365 is amended to read as follows:

4 (1) *A lien on real property, including a lien provided for in KRS 376.010, may be*
5 *released by either of the following methods:*

6 *(a) Subject to the provisions of paragraph (b) of this subsection,* a holder of a
7 lien on real property, including a lien provided for in KRS 376.010, shall
8 release the lien in the county clerk's office where the lien is recorded within
9 thirty (30) days from the date of satisfaction; ~~*or*~~.

10 *(b) 1. If evidence of the satisfaction of a lien is required before the thirty*
11 *(30) day period has expired, a licensed attorney admitted to the*
12 *practice of law in the Commonwealth of Kentucky may record, or*
13 *cause to be recorded, an affidavit, in writing, duly executed in the*
14 *presence of two (2) witnesses, in the county clerk's office where the*
15 *lien is recorded. The affidavit shall state that full payment of the*
16 *balance or payoff of the amount of the lien to the final lienholder or*
17 *final assignee has been made and that evidence of satisfaction of the*
18 *lien exists. In addition to the information required by this*
19 *subparagraph, the affidavit shall include the following in twelve (12)*
20 *point boldface type:*

21 **AFFIDAVIT**

22 *The undersigned on oath, being first duly sworn, hereby certifies as follows:*

23 *1. The undersigned is a licensed attorney admitted to practice in Kentucky;*

24 *and*

25 *2. That with respect to the mortgage given by to*
26 *dated and recorded in the offices of the Register of Deeds in book at*
27 *page*

1 a. [.....] That the undersigned was given written payoff information and
2 made such payoff and is in possession of a canceled check or other evidence of
3 payment to the mortgagee, holder of record, or representative servicer; or

4 b. [] That the undersigned was given written payoff information and made
5 such payoff by wire transfer or other electronic means to the mortgagee, holder
6 of record, or representative servicer and has confirmation from the undersigned's
7 bank of the transfer to the account provided by the mortgagee, holder of record,
8 or representative servicer.

9 Under penalties of perjury, I declare that I have examined this affidavit this
10 day of and, to the best of my knowledge and belief, it is true,
11 correct, and complete.

12

13 (Witness) (Signature)

14

15 (Witness) (Name Please print)

16 STATE OF KENTUCKY

17 COUNTY OF

18 The foregoing instrument was acknowledged before me this day of
19, by

20 Notary Public for Kentucky

21 My Commission Expires:; and

22 2. The attorney shall send notice of the recording of the affidavit to the
23 lienholder, and upon receipt of the notice, the holder of a lien shall be
24 released from the obligation of releasing the lien pursuant to
25 paragraph (a) of this subsection. The filing of an affidavit under this
26 subsection shall result in a release of the lien.

27 (2) An assignee of a lien on real property shall record the assignment in the county

1 clerk's office as required by KRS 382.360. Failure of an assignee to record a
2 mortgage assignment shall not affect the validity or perfection, or invalidity or lack
3 of perfection, of a mortgage lien under applicable law.

4 (3) A proceeding may be filed by any owner of real property or any party acquiring an
5 interest in the real property in District Court or Circuit Court against a lienholder
6 that violates subsection (1) or (2) of this section. A proceeding filed under this
7 section shall be given precedence over other matters pending before the court.

8 (4) Upon proof to the court of the lien being satisfied by payment in full to the final
9 lienholder or final assignee, the court shall enter a judgment noting the identity of
10 the final lienholder or final assignee and authorizing and directing the master
11 commissioner of the court to execute and file with the county clerk the requisite
12 release or assignments or both, as appropriate. The judgment shall be with costs
13 including a reasonable attorney's fee. If the court finds that the lienholder received
14 written notice of its failure to release and lacked good cause for not releasing the
15 lien, the lienholder shall be liable to the owner of the real property or to a party with
16 an interest in the real property in the amount of one hundred dollars (\$100) per day
17 for each day, beginning on the fifteenth day after receipt of the written notice, of the
18 violation for which good cause did not exist. This written notice shall be properly
19 addressed and sent by certified mail or delivered in person to the final lienholder or
20 final assignee as follows:

21 (a) For a corporation, to an officer at the lienholder's principal address or to an
22 agent for process located in Kentucky; however, if the corporation is a foreign
23 corporation and has not appointed an agent for process in Kentucky, then to
24 the agent for process in the state of domicile of the corporation;

25 (b) For an individual, to the individual at the address shown on the mortgage, at
26 the lienholder's residence or place of business, or at an address to which the
27 lienholder has directed that correspondence or payoff be sent;

- 1 (c) For a trust or an estate, to a fiduciary at the address shown on the mortgage or
2 at an address to which the lienholder has directed that correspondence or
3 payoff be sent; and
- 4 (d) For any other entity, including but not limited to limited liability companies,
5 partnerships, limited partnerships, limited liability partnerships, and
6 associations, to an officer, partner, or member at the entity's principal place of
7 business or to an agent for process.
- 8 (5) A lienholder that continues to fail to release a satisfied real estate lien, without good
9 cause, within forty-five (45) days from the date of written notice shall be liable to
10 the owner of the real property or to a party with an interest in the real property for
11 an additional four hundred dollars (\$400) per day for each day for which good cause
12 did not exist after the forty-fifth day from the date of written notice, for a total of
13 five hundred dollars (\$500) per day for each day for which good cause did not exist
14 after the forty-fifth day from the date of written notice. The lienholder shall also be
15 liable for any actual expense including a reasonable attorney's fee incurred by the
16 owner or a party with an interest in the real property in securing the release of real
17 property by such violation and in securing an award of damages. Damages under
18 this subsection for failure to record an assignment pursuant to KRS 382.360(3) shall
19 not exceed three (3) times the actual damages, plus attorney's fees and court costs,
20 but in no event less than five hundred dollars (\$500).
- 21 (6) The former holder of a lien on real property shall send by regular mail a copy of the
22 lien release to the property owner at his or her last known address within seven (7)
23 days of the release. A former lienholder that violates this subsection shall be liable
24 to the owner of the real property for fifty dollars (\$50) and any actual expense
25 incurred by the owner in obtaining documentation of the lien release.
- 26 (7) For the purposes of this section, "date of satisfaction" means that date of receipt by
27 a holder of a lien on real property of a sum of money in the form of a certified

1 check, cashier's check, wired transferred funds, or other form of payment
2 satisfactory to the lienholder that is sufficient to pay the principal, interest, and other
3 costs owing on the obligation that is secured by the lien on the property.

4 (8) The provisions of this section shall not apply when a lienholder is deceased and the
5 estate of the lienholder has not been settled.

6 (9) The state licensing agency, if applicable, or any holder of a lien on real property
7 shall be notified of the disposition of any actions brought under this section against
8 the lienholder.

9 (10) The provisions of this section shall be held and construed as ancillary and
10 supplemental to any other remedy provided by law.

11 (11) If more than one (1) owner or party with an interest in the real property brings an
12 action to recover damages under this section, any statutory damages shall be
13 allocated equally among recovering parties in the absence of agreement otherwise
14 among said parties. The entry of a judgment awarding damages shall bar a
15 subsequent action by any other person or entity to recover damages for the same
16 violation.

17 (12) If an attorney files a false affidavit under subsection (1)(b) of this section, the
18 lienholder may file an action in either District Court or Circuit Court against the
19 owner of real property or any party acquiring an interest in the real property. Any
20 judgment rendered against the owner of real property or any party acquiring an
21 interest in the real property under this section shall include reasonable attorney's
22 fees and court costs.