

1 AN ACT relating to mechanic's and materialman's liens.

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

3 ➔Section 1. KRS 376.010 is amended to read as follows:

4 (1) **(a)** Any person who performs labor or furnishes materials, for the erection,
5 altering, or repairing of a house or other structure or for any fixture or
6 machinery therein, for the excavation of cellars, cisterns, vaults, wells, or for
7 the improvement in any manner of real property including the furnishing of
8 agricultural lime, fertilizer, concrete pipe or drainage tile, crushed rock, gravel
9 for roads or driveways, and materials used in the construction or maintenance
10 of fences, by contract with, or by the written consent of, the owner, contractor,
11 subcontractor, architect, or authorized agent, shall have a lien thereon, and
12 upon the land upon which the improvements were made or on any interest the
13 owner has therein, to secure the amount thereof with interest as provided in
14 KRS 360.040 and costs.

15 **(b)** The lien on the land or improvements shall be superior to any mortgage or
16 encumbrance created subsequent to the beginning of the labor or the
17 furnishing of the materials, and the lien, if asserted as hereinafter provided,
18 shall relate back and take effect from the time of the commencement of the
19 labor or the furnishing of the materials.

20 **(c)** The lien shall not be for a greater amount in the aggregate than the contract
21 price of the original contractor, and should the aggregate amount of the liens
22 exceed the price agreed upon between the original contractor and the owner
23 there shall be a pro rata distribution of the original contract price among the
24 lienholders.

25 (2) **(a)** The lien shall not take precedence over a mortgage or other contract lien or
26 bona fide conveyance for value without notice, duly recorded or lodged for
27 record according to law, unless the person claiming the prior lien shall, before

1 the recording of the mortgage or other contract lien or conveyance, file in the
2 office of the county clerk of the county where~~[wherein]~~ he or she has
3 furnished or expects to furnish labor or materials, a statement showing that he
4 or she has furnished or expects to furnish labor or materials, and the amount
5 of the labor or materials in full~~[thereof]~~.

6 **(b)** The lien shall not, as against the holder of a mortgage or other contract lien or
7 conveyance, exceed the amount of the lien claimed or expected to be claimed
8 as set forth in the statement.

9 **(c)** The statement shall, in other respects, be in the form prescribed by KRS
10 376.080.

11 (3) **(a) When an agreement or contract for improving property is made with a**
12 **lessee and the property is owned by another, the lessee shall not be deemed**
13 **the agent of the owner to the extent of subjecting the right, title, or interest**
14 **of the owner of the property to any lien under this section unless the owner**
15 **has designated the lessee, in writing, as the owner's agent for purposes of**
16 **entering into the agreement or contract.**

17 **(b) When a lease agreement expressly provides that the interest of the owner**
18 **shall not be subject to liens for improvements made by the lessee, the lessee**
19 **shall notify the contractor making any improvements of the provisions in**
20 **the lease, and the knowing or willing failure of the lessee to provide this**
21 **notice to the contractor shall render the contract between the lessee and the**
22 **contractor voidable at the option of the contractor.**

23 **(c) The interest of the owner is not subject to any lien for improvements made**
24 **by the lessee or at the request of the lessee when:**

25 **1. The lease, a short form of the lease, or a memorandum of the lease**
26 **that contains the specific language in the lease prohibiting the**
27 **liability, is recorded in the office of the county clerk in the county**

- 1 where the premises are located before the commencement of
2 improvements to the premises, and the terms of the lease expressly
3 prohibit the owner's liability; or
- 4 2. The terms of the lease expressly prohibit the liability for payment by
5 the owner, and a notice advising that leases for the rental of premises
6 on a parcel of land, or at a particular location, prohibit the liability for
7 payment by the owner has been recorded in the office of the county
8 clerk in the county where the parcel of land or particular location is
9 located before the commencement of improvements to the premises,
10 and the notice includes the following:
- 11 a. The name of the owner;
12 b. The legal description of the parcel of land or particular location
13 to which the notice applies;
14 c. The specific language contained in the various leases prohibiting
15 the liability for payment by the owner; and
16 d. A statement that all or a majority of the leases entered into for
17 the premises on the parcel of land or particular location
18 expressly prohibit liability for payment by the owner.
- 19 (d) A notice that is consistent with the requirements of paragraph (c) of this
20 subsection shall prohibit the acquisition of any lien for improvements made
21 by a lessee even if other leases for premises on the parcel of land or
22 particular location do not expressly prohibit liens or if the provisions of
23 each lease restricting the acquisition of liens are not identical;
- 24 (e) 1. If a notice has not been filed with the county clerk as provided under
25 this subsection, any person who performs labor or furnishes materials
26 for improvements being made by a lessee may serve written demand
27 on the owner, by certified mail, requesting a copy of the provision in

1 *the lease prohibiting liability for payment for improvements made by*
 2 *the lessee if the lease has not been produced by the lessee.*

3 **2. The demand shall:**

4 **a. Identify the lessee and premises being improved; and**

5 **b. Include a warning in conspicuous type that the failure to provide**
 6 **the requested copy of the lease provision within thirty (30) days**
 7 **of the receipt of the demand may result in the owner's property**
 8 **being subject to the filing of a mechanic's or materialman's lien.**

9 **3. If the owner does not provide a true copy of the lease provision within**
 10 **thirty (30) days of the receipt of the demand, the owner may be subject**
 11 **to a lien under this section by the person performing labor or**
 12 **furnishing materials, if the person has otherwise complied with the**
 13 **requirements of this section, and if the person did not have actual**
 14 **notice that the interest of the owner was not subject to a lien for**
 15 **improvements made by the lessee.**

16 **(4) (a)** ~~A [No]~~ person who has not contracted directly with the owner or **the**
 17 **owner's**~~[his]~~ agent **and is not subject to subsection (3) of this section** shall
 18 **not** acquire a lien under this section unless he **or she** notifies in writing the
 19 owner of the property to be held liable or **the owner's**~~[his]~~ authorized agent,
 20 within seventy-five (75) days on claims amounting to less than \$1,000 and one
 21 hundred twenty (120) days on claims in excess of \$1,000 after the last item of
 22 material or labor is furnished, of his **or her** intention to hold the property
 23 liable and the amount for which he **or she** will claim a lien; **and**~~[.]~~

24 **(b)** It shall be sufficient to prove that the notice was mailed to the last known
 25 address of the owner of the property upon which the lien is claimed, or to **the**
 26 **owner's**~~[his]~~ duly authorized agent within the county in which the property to
 27 be held liable is located.

1 (5) (a)~~[(4)]~~ A~~[No]~~ person who has not contracted directly with the owner or the
2 owner's~~[his]~~ authorized agent and is not subject to subsection (3) of this
3 section shall not acquire a lien under this section on an owner-occupied single
4 or double family dwelling, the appurtenances or additions thereto, or upon
5 other improvements for agricultural or personal use to the real property or real
6 property contiguous thereto and held by the same owner, upon which the
7 owner-occupant's dwelling is located, unless he or she notifies in writing the
8 owner of the property to be held liable or the owner's~~[his]~~ authorized agent
9 not more than seventy-five (75) days after the last item of material or labor is
10 furnished, of the delivery of the material or performance of labor and of his or
11 her intention to hold the property liable and the amount for which he or she
12 will claim a lien.

13 (b) 1. It shall be sufficient to prove that the notice was mailed to the last
14 known address of the owner of the property upon which the lien is
15 claimed, or to the owner's~~[his]~~ duly authorized agent.

16 2. The~~[This]~~ notice under this subsection is in lieu of the notice provided
17 for in subsection (4) of this section~~[(3)]~~.

18 (c) Notwithstanding the foregoing provisions of this subsection, the lien provided
19 for under this section shall not be applicable to the extent that an owner-
20 occupant of a single or double family dwelling or owner of other property as
21 described in this subsection has, prior to receipt of the notice provided for in
22 this subsection, paid the contractor, subcontractor, architect, or authorized
23 agent for work performed or materials furnished prior to such payment.

24 (d) The contractor or subcontractor cannot be the authorized agent under this
25 subsection.

26 (e) This subsection shall apply to the construction of single or double family
27 homes constructed pursuant to a construction contract with a property owner

1 and intended for use as the property owner's dwelling.

2 ~~(6)~~~~(5)~~ For purposes of this section, "labor" includes but is not limited to all supplies
3 and work done by teams, trucks, machinery, and mechanical equipment, whether
4 the owner furnishes a driver or operator or not.

5 ~~(7)~~~~(6)~~ (a) "Supplies" includes small tools and equipment reasonably necessary in
6 performing the work required to be done, including picks, shovels, sledge
7 hammers, axes, pulleys, wire cables, ropes, and other similar items costing not
8 more than fifty dollars (\$50) per item, and tires and tubes furnished for use on
9 vehicles engaged in the performance of the work.

10 (b) "Supplies" also includes the cost of labor, materials, and repair parts supplied
11 or furnished for keeping all machinery and equipment used in the performance
12 of the work in good operating condition; and shall include the agreed or
13 reasonable rental price of equipment and machinery used in performing the
14 work to be done:

15 1. The lien for rental equipment or machinery shall not be more than the
16 aggregate sum of six (6) months' rental, and the aggregate amount of
17 such rental shall not exceed sixty percent (60%) of the agreed value of
18 the machinery or equipment; and

19 2. The liens for supplies as defined in this subsection are subordinate to the
20 liens for labor, material, and supplies as defined in this section.

21 ➔Section 2. KRS 371.325 is amended to read as follows:

22 No waiver of defense clause in any retail installment contract shall operate to cut off any
23 defense that an owner-occupant of a single or double family dwelling or the
24 appurtenances or additions thereto may have acquired by virtue of a third party
25 materialmen's lien under KRS 376.010~~(4)~~.