

1 AN ACT relating to the prevention of harmful practices associated with property
2 and casualty insurance.

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

4 ➔Section 1. KRS 367.620 is amended to read as follows:

5 As used in KRS 367.620 to 367.628:

6 (1) **"Contractor":**

7 **(a) Means a person in the business of contracting, or offering to contract, to**
8 **provide goods or services relating to real estate; and**

9 **(b) Includes any person that directly or indirectly solicits or offers a real estate**
10 **goods or services contract;**

11 (2) **"Goods or services relating to real estate":**

12 **(a) Means goods, services, or goods and services relating to real estate; and**

13 **(b) Includes any:**

14 **1. Repair, replacement, construction, reconstruction, or improvement of**
15 **real estate; and**

16 **2. Tree or debris removal;**

17 (3) **"Insured" means a person that is entitled, or may be entitled, to receive benefits**
18 **or payments under a property, casualty, or property and casualty insurance**
19 **policy;**

20 (4) **"Person" has the same meaning as in KRS 367.110;**

21 (5) **"~~Residential~~ Real estate":**

22 **(a) Means any parcel of real estate located in this state that is used for any**
23 **purpose; and**

24 **(b) Includes:**

25 **1. Residential real estate; and**

26 **2. Commercial real estate**~~[a new or existing building constructed for~~
27 ~~habitation by one (1) to four (4) families, including detached garages];~~

1

and

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~~(6)~~⁽²⁾ "Real estate goods or services contract" means a contract for the provision

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of goods or services relating to real estate, where the goods or services are

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expected to be paid from property, casualty, or property and casualty insurance

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proceeds~~["Roof system" means the components of a roof to include but not be~~

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~~limited to covering, framing, insulation, sheathing, ventilation, and~~

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~~weatherproofing; and~~

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~~(3) "Roofing contractor" means a person or entity in the business of contracting or~~

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~~offering to contract with an owner of residential real estate to repair or replace a~~

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~~roof system].~~

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➔Section 2. KRS 367.622 is amended to read as follows:

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(1) A person who~~[, on or after July 12, 2012,]~~ enters into a real estate goods or

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services~~[a] contract with a [roofing] contractor [to provide goods or services related~~

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~~to a roof system of residential real estate, where the goods or services are expected~~

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~~to be paid from the proceeds of a property and casualty insurance policy,]~~ may

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cancel the contract prior to midnight of the fifth business day after the person has

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received written notice from the insurer that all or part of the claim is not a covered

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loss under the~~[property and casualty]~~ insurance policy.

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(2) Cancellation shall be deemed to have occurred when the person does any of the

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following~~:[either]~~

21

(a) Personally delivers written notice of cancellation to the~~[roofing]~~ contractor;

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(b) Deposits~~[the]~~ written notice of cancellation in the United States mail, postage

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prepaid, and addressed to the~~[roofing]~~ contractor at the address stated in the

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contract; or~~[,]~~

25

(c) Transmits~~[If applicable, at the time]~~ notice of cancellation~~[is transmitted]~~ to

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the~~[roofing]~~ contractor by facsimile or email~~[at the time an e-mail notice of~~

27

~~cancellation is sent].~~

1 (3) Notice of cancellation~~[given by the person]~~ need not take a particular form and is
2 sufficient if it indicates by any form of written **or recorded** expression the intention
3 of the person not to be bound by the contract.

4 ➔Section 3. KRS 367.624 is amended to read as follows:

5 Prior to entering into **a real estate goods or services**~~[a]~~ contract **with any person**~~[on or~~
6 ~~after July 12, 2012, for the provision of goods or services relating to the repair or~~
7 ~~replacement of any part of a roof system of residential real estate as provided in KRS~~
8 ~~367.622], a~~[roofing]~~ contractor shall furnish the **person**~~[owner of the residential real~~
9 ~~estate]~~ with:~~

10 (1) The mailing address of the~~[roofing]~~ contractor through which written
11 communication may be received;

12 (2) The telephone number of the~~[roofing]~~ contractor and, if applicable, the
13 **contractor's** facsimile number and **email**~~[e-mail]~~ address;

14 (3) A statement in at least ten (10) point boldface type that states:
15 "You may cancel this contract at any time before midnight on the fifth business day
16 after you have received written notification from **the**~~[your]~~ insurer that all or any
17 part of the **contracted goods, services, or goods and services**~~[claim or contract]~~ is
18 not a covered loss under the **property, casualty, or property and casualty** insurance
19 policy. This right to cancel is in addition to any other rights of cancellation you may
20 have under state or federal law or regulation. See the attached Notice of
21 Cancellation form for an explanation of this right."; and

22 (4) A fully completed form in duplicate, under the conspicuous caption "NOTICE OF
23 CANCELLATION," and attached to but easily detachable from the contract, in at
24 least ten (10) point boldface type that shall read as follows:

25 "NOTICE OF CANCELLATION

26

27 (enter date of transaction)

1 If you are notified by the~~[your]~~ insurer that all or any part of the contracted goods,
 2 services, or goods and services~~[claim or contract]~~ is not a covered loss under the
 3 property, casualty, or property and casualty insurance policy, you may cancel this
 4 contract without penalty or monetary obligation before midnight of the fifth
 5 business day after you have received the notice~~[from your insurer]~~. To cancel this
 6 transaction, you may use any of the following methods: mail or otherwise deliver a
 7 signed and dated copy of this cancellation notice, or any other written notice of
 8 cancellation which you sign and date, to (enter physical address of ~~[roofing]~~
 9 contractor), or email~~[e-mail]~~ a notice of cancellation to (enter email~~[e-mail]~~ address
 10 of ~~[roofing]~~ contractor), or transmit a notice of cancellation to (enter facsimile
 11 number of ~~[roofing]~~ contractor), not later than midnight of the fifth day after you
 12 receive notice from the~~[your]~~ insurer.

13 I HEREBY CANCEL THIS TRANSACTION.

14

15 (Date)

16

17 (Buyer's Signature)"

18 ➔Section 4. KRS 367.626 is amended to read as follows:

19 (1) As used in this section, "emergency goods or services" means goods, services, or
 20 goods and services to immediately respond to a sudden, unexpected occurrence
 21 that poses a clear and imminent danger requiring immediate action to prevent or
 22 mitigate the loss or impairment of life, health, property, or essential public
 23 services.

24 (2) Except as provided in subsection (3) of this section:~~[, on or after July 12, 2012,]~~

25 (a) A~~[roofing]~~ contractor shall:

26 1. Not require any advance payments under a real estate goods or
 27 services~~[a] contract~~~~[for the repair or replacement of any part of a roof~~

1 system of residential real estate when payment is expected to be made
 2 from the proceeds of a property or casualty insurance policy} until the
 3 cancellation period[, as] provided in KRS 367.622[,}] has expired; and[-]
 4 2.[(2)] *Tender to the payor any payments, partial payments, or deposits*
 5 *made, and any note or other evidence of indebtedness provided, to the*
 6 *contractor under a real estate goods or services contract* within ten
 7 (10) days after the[a] contract has been cancelled under[as provided in]
 8 KRS 367.622[, a roofing contractor shall tender to the payor any
 9 payments, partial payments, or deposits made, and any note or other
 10 evidence of indebtedness, except as provided in subsection (3) of this
 11 section];

12 (b) *Any provision contained in a real estate goods or services contract that*
 13 *requires the payment of any fee shall not be enforceable against any person*
 14 *who has cancelled the contract under Section 2 of this Act; and*

15 (c) *Any real estate goods or services contract that contains a price that violates*
 16 *KRS 367.374 shall not be enforceable.*

17 (3) A[- roofing] contractor that provides[performs] any repair services or emergency
 18 goods or services authorized under a real estate goods or services contract that
 19 has been cancelled under Section 2 of this Act[by the owner of residential real
 20 estate], including but not limited to repair services necessary to prevent further
 21 damage to the premises, shall be entitled to collect a reasonable and customary
 22 amount for the goods, services, or goods and services provided[the repair services
 23 performed].

24 ~~[(4) Any provision in a contract executed on or after July 12, 2012, for the repair of a~~
 25 ~~roof system of residential real estate, as provided in KRS 367.620 to 367.628, that~~
 26 ~~requires the payment of any fee, except for repair services performed under~~
 27 ~~subsection (3) of this section, shall not be enforceable against any person who has~~

1 ~~cancelled a contract under KRS 367.622.~~

2 ➔Section 5. KRS 367.627 is amended to read as follows:

- 3 (1) (a) Any person may maintain an action to enjoin ***the*** continuing ***of*** any act in
4 violation of KRS 367.620 to 367.628 and, if injured by the act, may also
5 maintain an action for the recovery of damages.
- 6 (b) If the court finds based on evidence presented by the plaintiff that the
7 defendant is violating or has violated any of the provisions of KRS 367.620 to
8 367.628, the court shall enjoin the defendant from continuing the violations.
- 9 (c) It shall not be necessary that actual economic damages be alleged or proved
10 by the plaintiff in order for the court to enjoin violations.

11 ~~(d)(2)~~ In addition to injunctive relief ***and any other relief the plaintiff may be***
12 ***entitled to under this section.***~~;~~

13 ***1.*** The plaintiff in the action shall be entitled to recover from the defendant
14 two (2) times the amount of any actual economic damages sustained;
15 ***and***~~;~~

16 ~~2.(3)~~ The court may award ***the plaintiff*** reasonable attorneys' fees and
17 costs ~~to the owner of residential real estate who prevails in an action~~
18 ~~under subsection (1) of this section, in addition to any other relief the~~
19 ~~residential real estate owner may be entitled to under this section].~~

20 ~~(2)(4)~~ In addition to the ***remedies provided under subsection (1)***~~provisions~~ of this
21 section:~~;~~

22 ***(a)*** All of the remedies, powers, and duties provided ~~to~~~~for~~ the Attorney General
23 ***under KRS 367.110 to 367.300, and the penalties provided in KRS***
24 ***367.990,***~~by this chapter~~ shall apply with equal force and effect to any act
25 declared unlawful by KRS 367.620 to 367.628; ***and***

26 ***(b) The Attorney General may recover a civil penalty of five thousand dollars***
27 ***(\$5,000) per violation against any person who violates any provision of KRS***

1 367.620 to 367.628.

2 ~~(3)~~~~(5)~~ Nothing in this section shall prohibit the Attorney General or any other~~a~~
3 person from pursuing the recovery of damages afforded elsewhere under the
4 law.

5 ➔Section 6. KRS 367.628 is amended to read as follows:

6 (1) (a) Except as provided in paragraphs (b) and (c) of this subsection, ~~a~~~~roofing~~
7 contractor, or person representing a contractor, shall not represent, negotiate,
8 or advertise to represent or negotiate on behalf of any insured~~an owner of~~
9 ~~residential real estate~~ on any insurance claim in connection with the
10 provision of goods or services relating to real estate~~the repair or~~
11 ~~replacement of a roof system~~.

12 (b) Nothing in this subsection shall be construed to prohibit ~~a~~~~roofing~~
13 contractor, or person representing a contractor, from:

14 ~~1.~~~~(a)~~ Providing an estimate for the provision of goods or services
15 relating to~~repair, replacement, construction, or reconstruction of the~~
16 ~~property to the owner of residential~~ real estate; or

17 ~~2.~~~~(b)~~ Conferring with an insurance company's representative about
18 damage to real estate~~the property~~ after a claim has been submitted by
19 an insured~~the owner of residential real estate~~.

20 (c) This subsection shall not apply to a public adjuster licensed under Subtitle 9
21 of KRS Chapter 304.

22 (2) Where ~~the~~ goods or services relating to real estate are expected to be paid from
23 property, casualty, or property and casualty insurance~~the~~ proceeds ~~of a property~~
24 ~~and casualty policy~~, ~~a~~~~roofing~~ contractor or person representing ~~a~~~~roofing~~
25 contractor shall not:

26 (a) Cause damage to any part of the real estate~~a roof system~~ in order to increase
27 the scope of goods or services provided~~repair or replacement~~, or encourage

1 a person to cause damage to any part of the real estate~~[a roof system]~~ in order
 2 to secure a contract for goods or services~~[repair or replacement]~~;

3 (b) Offer to pay or rebate all or any portion of an insurance deductible or claims
 4 proceeds as an inducement to the sale of goods or services by a
 5 contractor~~[related to a residential roof contract]~~;

6 (c) Grant an allowance or discount against the fee to be charged by a
 7 contractor~~[under the contract]~~; ~~or~~

8 (d) Pay or offer to pay the insured~~[owner of residential real estate]~~ or his or her
 9 representative, for whom services have been or will be performed~~[pursuant to~~
 10 ~~KRS 367.620 to 367.628]~~, for any reason, any form of compensation in excess
 11 of one hundred dollars (\$100), including but not limited to a:

- 12 1. Bonus;
- 13 2. Coupon;
- 14 3. Credit;
- 15 4. Gift;
- 16 5. Prize;
- 17 6. Referral fee; or
- 18 7. Any other item having a monetary value; or

19 (e) File or claim a mechanic's lien pursuant to KRS 376.010 against an insured
 20 by reason of the insured's failure or refusal to pay any excess charge over
 21 and above the amount paid or expected to be paid by an insurer under a
 22 property, casualty, or property and casualty insurance policy.

23 ➔SECTION 7. A NEW SECTION OF KRS 367.620 TO 367.628 IS CREATED
 24 TO READ AS FOLLOWS:

25 In the event of a conflict between KRS 367.620 to 367.628 and any other law, KRS
 26 367.620 to 367.628 shall control.

27 ➔Section 8. KRS 371.160 is amended to read as follows:

1 **Except as provided in KRS 367.620 to 367.628:**

- 2 (1) If, in any contract in the amount of five hundred thousand dollars (\$500,000) or
3 more involving the improvement of real estate, a certain amount or percentage of
4 the contract is held back by the owner, that retained amount shall be deposited in a
5 separate escrow account with a bank or trust company authorized to do business in
6 the Commonwealth of Kentucky;~~[-]~~
- 7 (2) As of the time of the deposit of the retained funds, they shall become the sole and
8 separate property of the contractor to whom they are owed;~~[-]~~
- 9 (3) The escrow agent shall promptly invest all escrowed principal in obligations
10 selected by the escrow agent in its discretion;~~[-]~~
- 11 (4) Upon satisfactory completion of the contract, to be evidenced by a written release
12 by the owner, all funds accumulated in the escrow account, together with any
13 interest thereon, shall be paid immediately to the contractor to whom it is owed;~~[-]~~
- 14 (5) The escrow agent shall be compensated for its services in an amount agreed to by
15 the owner, contractor, and escrow agent. The compensation shall be a commercially
16 reasonable fee commensurate with fees being charged for handling of escrow
17 accounts of similar size and duration. The compensation shall be paid from the
18 escrow account;~~[-]~~
- 19 (6) In the event the owner fails or refuses to execute the release provided for in
20 subsection (4) of this section, then the contractor shall have a cause of action
21 against the owner in a court of proper jurisdiction; **and**~~[-]~~
- 22 (7) This section shall not apply to contracts with the Commonwealth, any county,
23 charter county, urban-county government, or municipality, or any other political
24 subdivision, agency, or instrumentality of the Commonwealth, or school boards.
- 25 ➔Section 9. KRS 371.425 is amended to read as follows:
- 26 (1) Except as provided in subsections (3), ~~and~~ (4), **and (5)** of this section, KRS
27 371.400 to 371.425 shall apply to public construction and public works projects,

1 and to private construction, excluding residential construction.

2 (2) KRS 371.400 to 371.425 shall apply to construction contracts entered into after
3 June 26, 2007.

4 (3) KRS 371.400 to 371.425 shall not apply to contracts entered into by a borrower of
5 funds that are provided, insured, or guaranteed by the United States Department of
6 Agriculture's Rural Utilities Service, or financed under a lien accommodation by
7 the Rural Utilities Service.

8 (4) KRS 371.400 to 371.425 shall not apply to any contract for construction of or
9 relating to any facility as defined in KRS Chapter 278.

10 **(5) In the event of a conflict between KRS 371.400 to 371.425 and KRS 367.620 to**
11 **367.628, KRS 367.620 to 367.628 shall control.**

12 ➔Section 10. This Act applies to contracts entered on or after the effective date of
13 this Act.