

1 AN ACT relating to marketable title.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 9 of this Act:*

6 *(1) "Marketable record title" means a title of record, as described in Section 2 of this*  
7 *Act that operates to extinguish interest and claims existing before the effective*  
8 *date of the root of title, as provided in Section 4 of this Act;*

9 *(2) "Muniments" means the records of title transactions in the chain of title of a*  
10 *person that:*

11 *(a) Purport to create the interest in land claimed by the person; and*

12 *(b) Upon which the person relies as a basis for the marketability of the person's*  
13 *title;*

14 *commencing with the root of title and including all subsequent transactions;*

15 *(3) "Person dealing with land" means a:*

16 *(a) Purchaser of an estate or interest in an estate;*

17 *(b) Mortgagee;*

18 *(c) Levying or attaching creditor;*

19 *(d) Land contract vendee; or*

20 *(e) Person seeking to:*

21 *1. Acquire an estate or interest in an estate; or*

22 *2. Impose a lien on an estate;*

23 *(4) "Recording," when applied to official public records of any court, includes filing;*

24 *(5) "Records" means all official public records that affect title to land and include*  
25 *probate records and records in the office of the county clerk of the county in*  
26 *which all or part of the land is located;*

27 *(6) "Root of title" means that title transaction in the chain of the title of a person:*

- 1        (a) That purports to create the interest claimed by the person;  
 2        (b) Upon which the person relies as a basis for the marketability of the person's  
 3            title;  
 4        (c) That is the most recent to be recorded as of a date at least forty (40) years  
 5            prior to the time when marketability is being determined; and  
 6        (d) The effective date of the root of title is the date on which it is recorded; and  
 7        (7) "Title transaction" means any transaction affecting title to any interest in land,  
 8            including title by:  
 9            (a) Will or descent;  
 10            (b) Tax deed;  
 11            (c) Trustee's, referee's, guardian's, executor's, administrator's, commissioner's,  
 12            or sheriff's deed;  
 13            (d) Decree of a court; or  
 14            (e) Warranty deed, quitclaim deed, or mortgage.

15        ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 16 READ AS FOLLOWS:

17        Any person having the legal capacity to own land in this state who has an unbroken  
 18        chain of title of record to an interest in land for at least forty (40) years has a  
 19        marketable record title to that interest, subject to Section 3 of this Act. A person is  
 20        considered to have this unbroken chain of title when:

- 21        (1) The official public records disclose a conveyance or other title transaction of  
 22            record that occurred at least forty (40) years before the time the marketability is  
 23            determined; and  
 24        (2) The conveyance or other title transaction purports to create an interest in:  
 25            (a) The person claiming the interest; or  
 26            (b) A person from whom, by one (1) or more title transactions of record, the  
 27            purported interest has become vested in the person claiming the interest;

1 with nothing appearing of record in either case purporting to divest the claimant  
2 of the purported interest.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
4 READ AS FOLLOWS:

5 Marketable record title shall be subject to:

6 (1) All interests and defects that are inherent in the muniments of which the chain of  
7 record title is formed, provided that:

8 (a) A general reference in the muniments, or any one (1) of them, to:

9 1. Easements;

10 2. Use restrictions; or

11 3. Other interests created before the root of title;

12 shall not be sufficient to preserve them, unless specific identification is  
13 made in the muniments of a recorded title transaction that creates the  
14 easement, use restriction, or other interest; and

15 (b) Possibilities of reverter, and rights of entry or powers of termination for  
16 breach of condition subsequent, which interests are inherent in the  
17 muniments of which the chain of record title is formed and which have  
18 existed for forty (40) years or more, shall be preserved and remain effective  
19 only in the manner provided in Section 5 of this Act;

20 (2) All interests preserved by:

21 (a) Filing proper notice; or

22 (b) Possession by the same owner continuously for at least forty (40) years, in  
23 accordance with Section 5 of this Act;

24 (3) The rights of any person arising from adverse possession or adverse user, if the  
25 period of adverse possession or adverse user was in whole or in part subsequent  
26 to the effective date of the root of title;

27 (4) Any interest arising out of a title transaction recorded after the effective date of

1 the root of title from which the unbroken chain of title of record is started,  
 2 provided the recording shall not revive or give validity to any interest that has  
 3 been before the time of the recording by the operation of Section 4 of this Act;  
 4 and

5 (5) The exceptions stated in Section 7 of this Act.

6 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 7 READ AS FOLLOWS:

8 Subject to Section 3 of this Act, marketable record title is held by its owner and shall be  
 9 taken by a person dealing with the land free and clear of all interests, claims, or  
 10 charges the existence of which depends upon any act, transaction, event, or omission  
 11 that occurred before the effective date of the root of title. All of these interests, claims,  
 12 or charges, however denominated, whether:

13 (1) Legal or equitable;

14 (2) Present or future; or

15 (3) Asserted by a person:

16 (a) Who has full capacity to act on his or her own behalf or under a disability;

17 (b) Within or outside the state;

18 (c) Natural or corporate; or

19 (d) Private or governmental;

20 are void.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 22 READ AS FOLLOWS:

23 (1) A person claiming an interest in land may preserve and keep effective the interest  
 24 by filing for record during the forty (40) year period immediately following the  
 25 effective date of the root of title of the person whose record title would otherwise  
 26 be marketable, a notice in writing, verified by oath, setting forth the nature of the  
 27 claim. A disability or lack of knowledge of any kind on the part of anyone shall

1 not suspend the running of the forty (40) year period. Notice may be filed for  
 2 record by the claimant or by a person acting on behalf of any claimant who is:

3 (a) Under a disability;

4 (b) Unable to assert a claim on his or her own behalf; or

5 (c) One (1) of a class whose identity cannot be established or is uncertain at the  
 6 time of filing the notice of claim of record.

7 (2) If the same record owner of any possessory interest in land has been in  
 8 possession of the land continuously for a period of at least forty (40) years,  
 9 during which period:

10 (a) No title transaction with respect to the interest appears of record in the  
 11 record owner's chain of title;

12 (b) No notice has been filed by the record owner or on behalf of the record  
 13 owner provided in subsection (1) of this section; and

14 (c) Possession continues to the time when marketability is being determined;  
 15 the period of possession is considered equivalent to the filing of the notice  
 16 immediately preceding the termination of the forty (40) year period described in  
 17 subsection (1) of this section.

18 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 19 READ AS FOLLOWS:

20 (1) To be effective and entitled to be recorded, the notice under Section 5 of this Act  
 21 shall:

22 (a) Be in the form of an affidavit;

23 (b) State the nature of the claim to be preserved and the names and addresses  
 24 of the persons for whose benefit the notice is being filed;

25 (c) Contain an accurate and full description of all land affected by the notice in  
 26 specific terms and not by general inclusions, except that if the claim is  
 27 founded upon a recorded instrument, then the description in the notice may

- 1           be the same as that contained in the recorded instrument;  
 2           (d) State the name of each record owner of the land affected by the notice, at  
 3           the time of the recording, together with the recording information of the  
 4           instrument by which each record owner acquired title to the land;  
 5           (e) Be made by any person who has knowledge of the relevant facts or is  
 6           competent to testify concerning the facts in court; and  
 7           (f) Be filed of record in the office of the county clerk in the county or counties  
 8           where the land described is located.

9           (2) The county clerk shall:

- 10           (a) Accept for filing all notices presented to the clerk that describe the land  
 11           located in the county that the clerk serves;  
 12           (b) Enter and record complete copies of the notice in the same way that deeds  
 13           are recorded under the names of the claimants appearing in the notice and  
 14           under the names of the record owners appearing in the notice; and  
 15           (c) Charge the same fees for recording the notice as are charged for recording  
 16           a deed as provided under KRS 64.012.

17           (3) A notice prepared, executed, and recorded in conformity with the requirements of  
 18           this section, or a certified copy of the notice, shall be accepted as evidence of the  
 19           facts stated to the extent they affect title to the land affected by the notice.

20           (4) Any person who knowingly makes any false statement in a notice executed under  
 21           this section shall be guilty of perjury under KRS Chapter 523.

22           ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 23 READ AS FOLLOWS:

24           The provisions of Section 1 to 9 shall not be applied to bar or extinguish any:

- 25           (1) Lessor or the lessor's successor as a reversioner of the lessor's right of possession  
 26           on the expiration of any lease, or any lessee or the lessee's successor of the  
 27           lessee's rights in and to any lease, except as may be permitted under Section 9 of

1        this Act;

2        (2) Easement or interest in the nature of an easement created or held for any  
 3        railroad or public utility purpose;

4        (3) Easement or interest in the nature of an easement, the existence of which is  
 5        clearly observable by physical evidence of its use;

6        (4) Easement or interest in the nature of an easement, or any rights appurtenant to  
 7        an easement granted, excepted, or reserved by the instrument creating the  
 8        easement or interest, including any right for future use, if the existence of the  
 9        easement or interest is evidenced by the location beneath, upon, or above any part  
 10       of the land described in the instrument of any pipe, valve, road, wire, cable,  
 11       conduit, duct, sewer, track, pole, tower, or other physical facility and whether or  
 12       not the existence of the facility is observable;

13       (5) Right, title, estate, or interest in coal, and any mining or other rights pertinent to  
 14       or exercisable in connection with any right, title, estate, or interest in coal;

15       (6) Mortgage recorded in conformity with KRS 382.110; or

16       (7) Right, title, or interest of the United States, of this state, or of any political  
 17       subdivision, body politic, or agency of the United States or this state.

18       ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 19       READ AS FOLLOWS:

20       Nothing contained in Sections 1 to 9 of this Act shall be construed to extend the period  
 21       of time for the bringing of an action or for the performance of any other required act  
 22       under any statutes of limitations or, except as provided in Sections 1 to 9 of this Act, to  
 23       affect the operation of any statutes governing the effect of the recording of or the  
 24       failure to record any instrument affecting land.

25       ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO  
 26       READ AS FOLLOWS:

27       Sections 1 to 9 of this Act shall be liberally construed to effect the purpose of

- 1 *simplifying and facilitating land title transactions by allowing persons to rely on a*
- 2 *record chain of title as described in Section 2 of this Act, subject only to the limitations*
- 3 *in Section 3 of this Act.*