

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, **lessee,**
11 contractor, subcontractor, architect, or authorized agent, shall have a lien
12 thereon, and upon the land upon which the improvements were made, or on
13 any interest the owner **or lessee** has therein, to secure the amount thereof with
14 interest as provided in KRS 360.040, and costs.

15 **(b) When improvements to property are made pursuant to an agreement or**
16 **contract with a lessee, the lessee shall not be deemed the authorized agent of**
17 **the owner unless the owner has designated the lessee, in writing, as the**
18 **owner's agent for purposes of entering into the agreement or contract.**

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

24 **(d)** The lien shall not be for a greater amount in the aggregate than the contract
25 price of the original contractor, and should the aggregate amount of the liens
26 exceed the price agreed upon between the original contractor and the owner
27 there shall be a pro rata distribution of the original contract price among the

1 lienholders.

2 (2) (a) The lien shall not take precedence over a mortgage or other contract lien or
3 bona fide conveyance for value without notice, duly recorded or lodged for
4 record according to law, unless the person claiming the prior lien shall, before
5 the recording of the mortgage or other contract lien or conveyance, file in the
6 office of the county clerk of the county ~~where~~^{wherein} he or she has
7 furnished or expects to furnish labor or materials, a statement showing that he
8 or she has furnished or expects to furnish labor or materials, and the amount
9 of the labor or materials in full~~[-thereof]~~.

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

13 (c) The statement shall, in other respects, be in the form prescribed by KRS
14 376.080.

15 (3) (a) Any lien under this section shall only extend to the right, title, and interest
16 of the person who contracts for the improvements as the right, title, and
17 interest exist at the commencement of the improvements or as thereafter
18 acquired in the real property. When improvements to property are made by
19 a lessee in accordance with an agreement between the lessee and his or her
20 lessor, the lien shall also extend to the interest of the lessor.

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

27 (c) The interest of the lessor is not subject to any lien for improvements made

1 by the lessee or at the request of the lessee when:

2 1. The lease, a short form of the lease, or a memorandum of the lease
3 that contains the specific language in the lease prohibiting the liability
4 is recorded in the office of the county clerk in the county where the
5 premises are located before the commencement of improvements to the
6 premises, and the terms of the lease expressly prohibit such liability;

7 or

8 2. a. The terms of the lease expressly prohibit such liability; and

9 b. A notice advising that leases for the rental of premises on a
10 parcel of land, or at a particular location, prohibit such liability
11 has been recorded in the office of the county clerk in the county
12 where the parcel of land or particular location is located before
13 the commencement of improvements to the premises. The notice
14 shall include the following:

15 i. The name of the owner;

16 ii. The legal description of the parcel of land or particular
17 location to which the notice applies;

18 iii. The specific language contained in the various leases
19 prohibiting such liability; and

20 iv. A statement that all or a majority of the leases entered into
21 for the premises on the parcel of land or particular location
22 expressly prohibit such liability.

23 (d) A notice that is consistent with the requirements of paragraph (c) of this
24 subsection shall prohibit the acquisition of any lien against the lessor's
25 interest in the property for improvements made by a lessee even if other
26 leases for premises on the parcel of land or particular location do not
27 expressly prohibit liens, or if the provisions of each lease restricting the

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acquisition of liens are not identical;

(e) 1. Any person who performs labor or furnishes materials for improvements being made by a lessee may serve written demand on the lessor, by certified mail, requesting a copy of the provision in the lease prohibiting liability for improvements made by the lessee.

2. The demand shall:

- a. Identify the lessee and premises being improved; and
- b. Include a warning in conspicuous type that the failure to provide the requested copy of the lease provision within thirty (30) days of the receipt of the demand may result in the lessor's property being subject to the filing of a mechanic's or materialman's lien.

3. If the lessor does not provide a true and accurate copy of the lease provision within thirty (30) days of the receipt of the demand, the lessor's interest in the property shall be subject to a lien under this section by the person performing labor or furnishing materials, if the person has otherwise complied with the requirements of this section and the person did not have actual notice that the interest of the lessor was not subject to a lien for improvements made by the lessee.

(4) (a) A ~~person~~ person who has not contracted directly with the owner, the owner's ~~or his~~ agent, or the lessee, if applicable, shall not acquire a lien under this section unless he or she notifies, in writing, the owner of the property to be held liable, the owner's ~~or his~~ authorized agent, or the lessee, if applicable, within seventy-five (75) days on claims amounting to less than one thousand dollars (\$1,000) and one hundred twenty (120) days on claims in excess of one thousand dollars (\$1,000) after the last item of material or labor is furnished, of his or her intention to hold the property liable and the amount for which he or she will claim a lien; and ~~and~~

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

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

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

19 **(c)** ***The***~~[This]~~ notice ***under this subsection*** is in lieu of the notice provided for in
20 subsection ***(4) of this section***~~[(3)]~~.

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

27 **(e)** The contractor or subcontractor cannot be the authorized agent under this

1 subsection.

2 ~~(f)~~ This subsection shall apply to the construction of single or double family
3 homes constructed pursuant to a construction contract with a property owner
4 and intended for use as the property owner's dwelling.

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

8 ~~(7)~~~~(6)~~ **As used in this section:**

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

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

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

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

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

26 No waiver of defense clause in any retail installment contract shall operate to cut off any
27 defense that an owner-occupant of a single or double family dwelling or the

- 1 appurtenances or additions thereto may have acquired by virtue of a third party
- 2 materialmen's lien under KRS 376.010~~[(4)]~~.