

Mechanic, Materialman, and Professional Real Estate Liens Under Kentucky Law

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The purpose of this article is to address mechanic, materialman and professional real estate liens under Kentucky law, and the relationship of such liens to recorded mortgages.

MECHANIC AND MATERIALMAN LIENS

Pursuant to KRS 376.010, any person who performs labor or furnishes materials for the erection, alteration or repair of a house or other structure or for the improvement of real estate shall have a lien upon the land and the improvements to secure the amount owed such person, together with interest and costs. KRS 376.010, et seq., sets forth the procedure on how these liens are processed. The procedure is summarized as follows:

1. Commercial Property

a. Preliminary Notice:

In the event the contractor has not contracted directly with the owner of the property, he is required to notify the owner of the property in writing of his intention to hold the property liable and the amount for which he will claim a lien.

(1) In the event the contractor's claim amounts to less than \$1,000, he must provide such notice within 75 days after the last item of material or labor is furnished.

(2) In the event the contractor's claim is in excess of \$1,000, he must provide such notice within 120 days after the last item of material or labor is furnished.

The contractor will be required to prove that such notice was sent. Accordingly, the notice should be sent by certified mail.

b. Filing of Lien:

To preserve his lien, the contractor must also file a statement of his lien. This lien must be filed within six (6) months after the contractor ceases to labor or furnish materials. The statement must be filed in the office of the County Court Clerk of the county where the improvement is situated. The statement of claim must include the following:

(1) The amount due the contractor, with all just credits and set offs known to him.

(2) A description of the property intended to be covered by the lien sufficiently accurate to identify it.

(3) The name of the owner of the property, if known.

(4) Whether the materials were furnished or the labor performed by a contract with the owner or with a contractor or subcontractor.

(5) The name and address of the claimant. If the claimant is a corporation, the statement must state the name and address of the corpo-

ration's process agent, or some other address at which service of process under the Rules of Civil Procedure may be accomplished.

The statement must be subscribed and sworn to by the person claiming the lien or by someone in his behalf. The contractor is also required to send a copy of the statement to the property owner. Again, it is recommended that a copy of the statement be sent by certified mail. The statement must be sent to the owner within seven (7) days of the filing of the statement with the County Court Clerk.

c. Filing Litigation:

To continue to preserve his lien, the contractor must file an action to enforce the lien with the Circuit Court in the county where the lien is asserted. The contractor must file this litigation within twelve (12) months from the day of the filing of the statement in the Clerk's office.

2. Residential Property

As to residential property, in lieu of the preliminary notice provisions as set forth above on commercial property, the following provisions shall apply.

a. Preliminary Notice:

In the event the contractor has not contracted directly with the owner of an owner-occupied single or double family dwelling, the appurtenances or additions thereto, or upon improvements for agriculture or personal use to the real property contiguous thereto and held by the same owner, the contractor must notify the owner of the property in writing of his intention to hold the property liable and the amount for which he claims a lien. This provision also applies to the construction of single or double family homes constructed pursuant to a construction contract with a property owner and intended for use as the property owner's dwelling. This notice must be sent to the owner of the property within seventy-five (75) days after the last item of material or labor is furnished.

Statute provides that the lien shall not be

applicable to the extent that the owner occupant of a single or double family dwelling or owner of other property as described in this subsection has, prior to the receipt of notice, paid the contractor, subcontractor, or architect for the work performed and the materials furnished.

b. Filing of Lien:

To preserve his lien, the contractor must also file a statement of his lien. This lien must be filed within six (6) months after the contractor ceases to labor or furnish materials. The statement must be filed in the office of the County Court Clerk of the county where the improvement is situated. The statement of claim must include the following:

(1) The amount due the contractor, with all just credits and set offs known to him.

(2) A description of the property intended to be covered by the lien sufficiently accurate to identify it.

(3) The name of the owner of the property, if known.

(4) Whether the materials were furnished or the labor performed by a contract with the owner or with a contractor or subcontractor.

(5) The name and address of the claimant. If the claimant is a corporation, the statement must state the name and address of the corporation's process agent, or some other address at which service of process under the Rules of Civil Procedure may be accomplished.

The statement must be subscribed and sworn to by the person claiming the lien or by someone in his behalf. The contractor is also required to send a copy of the statement to the property owner. Again, it is recommended that a copy of the statement be sent by certified mail. The statement must be sent to the owner within seven (7) days of the filing of the statement with the County Court Clerk.

c. Filing Litigation:

To continue to preserve his lien, the contractor must file an action to enforce the lien with the Circuit Court in the county where the lien is asserted. The contractor must file this litigation within twelve (12) months from the day of the filing of the statement in the Clerk's office.

3. Public Projects

As to public projects, a different set of rules apply. Pursuant to KRS 376.210, a contractor may not assert a mechanic or materialman lien against a public project owned by the state, county, or municipality. Rather, a contractor may only assert a lien against the funds due the prime contractor. To assert a lien against such proceeds, the contractor must perform the following:

a. File a verified statement with the County Court Clerk where he has undertaken to provide labor or material and with the County Court Clerk in which the seat of government of the owner is located.

b. The statement shall state that the contractor has undertaken and expects to furnish labor or materials, and shall identify the project which they are to be furnished. The statement shall also state the amount due and the date on which labor or materials were last furnished.

c. The statement must be filed within thirty (30) days after the last day of the month that labor or materials were last furnished.

d. In the event the contractor has a contract with a prime contractor or sub-contractor, the contractor must send an attested copy of the statement together with a cover letter explaining the assertion of the lien to the prime contractor or sub-contractor. Such documents must be sent to the prime contractor or sub-contractor by certified mail.

e. An attested copy of this statement must be delivered to the public authority along with a copy of the letter and attested lien statement addressed to the contractor or sub-contractor.

Once this process has been completed, statute thereafter provides for a procedure on how the notice of lien is to be processed. This procedure is set forth in KRS 376.250.

ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, REAL ESTATE BROKERS AND LAND SURVEYORS' LIENS

Pursuant to KRS 376.075, any professional engineer, licensed architect, licensed landscape architect, real estate broker, or professional land surveyor who performs professional services shall have a lien on the building, structure, land or project relative to which the services were performed, to secure the amount of the charges for services with interest and costs. KRS 376.075 also sets forth a procedure on how these liens are to be processed, which procedure is as follows:

1. The professional must file a statement of lien. This statement must be filed within six (6) months after he ceases to provide the services. The statement must be filed in the office of the county court clerk of the county where the property is situated. The statement of claim must include the following:

a. The amount due the claimant, with all just credits and set offs known to him.

b. A description of the property intended to be covered by the lien sufficiently accurate to identify it.

c. The name of the owner of the property, if known.

d. Whether the services were furnished by contract with the owner or with a contractor or architect.

e. The statement must be subscribed and sworn to by the person claiming the lien or by someone in his behalf.

No person who has not contracted directly with the owner or his agent shall acquire a lien under this section.

2. To continue to preserve the lien, the professional must file an action to enforce the lien with the circuit court in the county where the lien is asserted. The professional must file this litigation within twelve (12) months from the day of the filing of the statement.

There are some limitations on the lien rights of brokers. Brokers must have written agreements which expressly provide for the broker's compensation. The broker must also comply with his obligations under the written agreement.

THE LIEN VS THE MORTGAGE INTEREST

Typically, a previously filed mortgage against the property will prevail over the mechanic and materialman lien. However, under certain circumstances, the lien could take priority over the mortgage interest.

The statutory provision which addresses the priority between a Bank's mortgage interest and the competing lien is addressed in KRS 376.010(2). This statutory provision does address events in which the competing lien takes priority over the mortgage interest.

One way for a contractor to take priority over the Bank's mortgage interest is to file a lien statement prior to the filing of the Bank's mortgage agreement. In the event a contractor has filed a lien statement before the filing of the Bank's mortgage, the Bank must insure that the contractor is paid. However, contractors very seldom file such prior lien statements.

The only other way that a competing lien can take priority over the mortgage interest of the Bank is to prove that the Bank had notice of the competing lien prior to a disbursement of loan proceeds by the Bank, in which event the competing lien will take priority over the mortgage interest to the extent of the disbursement or any subsequent disbursements. However, the issue of priority of a competing lien over a mortgage interest is not determined upon the Bank's knowledge or notice that the contractor has performed work or that the contractor may claim a lien for such work. Rather, the issue of priority is determined upon whether the

Bank has knowledge that the owner is unable to pay the claim or that the contractor intends to file a lien. As stated by the Kentucky Court of Appeals in *Grider v. Mutual Federal Savings and Loan Assoc.*, Ky. App. 565 S.W.2d 647 (1978):

“Analysis of these cases leads to the conclusion that in order to have actual notice, the mortgagee must know that there are unpaid claims for which a lien may be asserted and that the debtor is unable to pay such claims or that the claimant intends to file a lien.”

SUMMARY

In summary, the statutory requirements for the proper filing of a lien must be strictly complied with, or the lien is lost. *Middleton Engineering Co. v. Main Street Realty, Ky.*, 839 S.W.2d 274 (1992). Additionally, once the lien holder has a knowledge that payment for work or material may not be made, the lien holder should provide written notice of such knowledge to the lending Bank as soon as possible. It is recommended that the services of an attorney be procured to ensure compliance with the applicable statutes.

About Tom Keuler

Tom has been a practicing attorney with **Denton & Keuler** for 26 years. He has represented both Banks and contractors in hundreds of foreclosure actions and has also been involved in arbitration and mediation proceedings representing the interests of contractors and sub-contractors.

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