

Universal Commercial Code Filings

ASSIGNMENTS - KRS 186.045 & KRS 355.9-405

Secured parties often "sell" or trade loans among themselves. When this occurs, they are required to file an assignment within 30 days in the county where the original lien is filed. That county will process the assignment in its index, attach the assignment to the original title lien statement and input it into the AVIS system.

A secured party may assign all of its rights by filing a separate written statement of assignment. Document requirements are as follows:

- The name of the secured party of record
- Signed by the secured party of record
- The name of the debtor
- The original file number
- The original date of filing
- The name and address of the assignee
- A description of the vehicle assigned

AMENDMENTS

Some secured parties will file an amendment to change their mailing address. No other situation requires or permits amendments to title lien statement filings.

CONTINUATION STATEMENTS

Since title lien notations are permanent, a continuation statement pertaining to title liens is not permitted or required and therefore do not exist.

MISCELLANEOUS LIENS

Clerks are regularly requested to place a variety of other liens against titled property. Liens on titled property are limited to commercial liens. The title document and the AVIS system has a maximum capacity of only two liens at any time per titled property (KRS 186A.190). You may file *lis pendens*, judgment liens, mechanics liens, etc. in your regular place for filing such liens, however, they are 100% ineffective since they **do not, and cannot** appear on the title document. Referring you to the prevailing statute, "the only means of perfecting a lien for titled property is by its notation on the certificate of title (KRS 186A.190)(2).

Inventory of Motor Vehicles

Titled property dealers borrow money on their inventory sometimes referred to as "floor plans."

The lender (secured party) will file a regular UCC filing stating, "the inventory of motor vehicles currently in inventory or hereinafter acquired into inventory." (Inventory is defined in KRS 355.9-109). This terminology circumvents the legal requirement for individual title lien statements for each vehicle or other titled property.

Whenever a repossession occurs on dealer inventory, a separate set of repossession documents are required for each vehicle repossessed, regardless of the number repossessed.

Change of Address

The address listed on a Kentucky Certificate of Title is immaterial in determining which county to be the proper place to file a title lien statement. No updated title showing a current residence address is required. The debtor need only furnish their corrected address to be updated in AVIS (KRS 186A.235).

Internal Revenue Seizure Sales

Valid commercial liens showing in AVIS are not automatically eligible to be terminated by IRS sales.

Mobile Homes - Real Estate

Confusion as to how liens are filed on mobile homes after they become attached to real estate has been cleared up by the Court of Appeals in *Hiers v. Bank One*, 946 SW2d 196 (1996). The Court of Appeals has determined that permanently tied down or not, the only way to secure a lien on a mobile home is by notation on a title, period.

Basically the court decision on the above case states that the ONLY way to file a lien upon a mobile home or manufactured home is by notation on the title. It is important to remember that Kentucky titles mobile homes, many other states do not. The confusion results when an out of state attorney, mortgage or financing company is not familiar with Kentucky law. When questioned about our statutes it would be beneficial to refer an attorney to the court case.

A note of caution -- a document stating that an endorsement is filed that states a mobile home is no longer a mobile home, but a fixture upon real estate is NOT valid in Kentucky. Kentucky County Clerks have been asked to junk the title to a mobile home and file the lien as a mortgage or a fixture in the land records section. This does not meet Kentucky's recording requirements.

The secured party must submit the title and a title lien statement. This lien will be placed upon the title face by notation.

If the owner of the mobile home (the debtor) owns the land the mobile home is situated on, the secured party can also file a mortgage in land records. To totally secure the transaction the secured party can file the mortgage and include in the mortgage a fixture filing. It is totally proper to include fixture filing information within a mortgage. This would also protect the secured party in the event that Kentucky law ever changed its position on a mobile home being titled property.

House Bill 739 Clarification

Although this bill updates KRS 355.9-401-406 and requires an ID number for the debtor on all lien filings, and KRS 186 and KRS 186A lead the clerk to KRS 355.9 for filing requirements, the Department of Vehicle Regulation has the authority to determine the form requirements (KRS 186A.060). The decision to omit this requirement for vehicle lien filings was made.

REPOSSESSIONS - KRS 186.045(4)

Any repossession transaction processed by a secured party must be processed in the county where the first lien was filed.

In situations where there are two liens on the same vehicle in different counties, a secured party would submit the proper documents to the county where the first lien is filed. That county would forward a photocopy of the repossession affidavit (form TC96-192) executed by the secured party of record to the county where the second lien is filed. This second county would use the copy of the repossession affidavit received as a termination statement and terminate the lien in their records and in AVIS.

Requirements of repossession:

1. Form TC96-192, Affidavit of Repossession
2. Termination Statement (signed)
3. New titling fees

TERMINATIONS (KRS 186.045 & KRS 355.9-404)

The secured party is required by statute to file a termination within ten days after the loan is paid in full (KRS 186.045)(2). This termination must be filed in the county where the lien was originally filed. The clerk shall within five days note the termination in his records and enter the same into the AVIS (KRS 186.045)(2)(3). When the owner of the vehicle presents his title to ANY COUNTY CLERK in this state KRS 186.045(3) requires any clerk to access AVIS and note the termination on the title, the county where the termination was filed and place their seal on the title (KRS 186.045)(2).

TITLE LIEN STATEMENTS

The perfection and discharge of a security interest in any property which has been issued a Kentucky certificate of title shall be by notation on the certificate of title (KRS 186A.190)(1). The sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter is by notation on such property's certificate of title (KRS 186A.190)(2).

Property Required to be Titled

- Vehicle (KRS 186.010)(8)(a)
- Manufactured (or mobile) home or trailer (KRS 186A.070)
- Motorboats (KRS 186A.015, 235.055)

Requirements for Filing a Title Lien Statement KRS 186A.190, KRS 355.9

A title lien statement must have the following information to be filed:

1. The name(s) of the debtor and their address
2. The name of the secured party and their mailing address
3. Signature of the debtor and date executed
4. Description of collateral (year, make, VIN)
5. Title or goldenrod copy of VTR form (TC-96-182)

Note to Clerks: A certified copy of the VTR would be sufficient provided the filer states that the goldenrod is lost and AVIS shows a pending lien

Place of Filing KRS 186A.190(2)

Generally, a title lien filing should be made in the county of the debtor's residence, if an individual, and in the county of principal headquarters of a resident business or in the county of principal use of the titled property, if the business or individual is a nonresident.

Partial Terminations

There are no circumstances that produce title lien partial terminations

Duration of Filing

Once a title lien is noted upon the face of a certificate of title, it is permanent unless released in writing by the secured party of record. A notation on the title does not expire by the passage of time, as do other types of UCC filings.

Late Filing of Title Liens - KRS 186A.200(2)

Statutory law requires the secured party to file the lien within fifteen days of its execution by the debtor. If not timely filed, a penalty is assessed by the County Clerk as a prerequisite for filing, together with the regular filing fee (KRS 186A.200)(2). If a title lien statement is not dated, there is a charge because the clerk's office has no way of knowing when the document was executed.

Transfer of Ownership - KRS 186A.215

Ownership transfer is prohibited until any and all existing lien notations are terminated in writing by the secured party of record. This termination must be filed in the county where the lien was filed. Only the county where the lien is filed may cancel the lien in the AVIS.

TRANSFER OF EQUITY

Any titled property is prohibited from being transferred to a different owner unless the lien notation is released in writing (KRS 186A.190). However, numerous situations occur that promote the need to transfer the titled property from the current owner's name to a different name or names (divorce, etc.). As an accommodation to the customer for these situations the clerk may transfer equity as described below. There is not a statute to cover this type transfer.

A transfer of equity is simply the written permission by the secured party to remove the existing lien temporarily, process the transfer and then re-file the lien into AVIS immediately, so that the same lien will appear on the new title. There is a fee for this and is treated like a new lien filing in all respects including a new file number. This transfer transaction must be performed in the county where the subject lien is filed. If the debtor has two liens on the title, written permission is required from both secured parties in order to process the transfer of equity.

The clerk processing the transfer of equity will establish the pending lien immediately and the lien must be processed in the same day.

The new file number will need to reflect the original date and time. It will be necessary to override the AVIS system (or any computerized system your county may use). Attach the original lien to the written permission by the secured party as the documentation to back up the entry.

If there are two liens on the title it will be the responsibility of the clerk to ensure the transfer of equity liens are in the correct order.

Since a goldenrod or title are required in order to establish another lien there should not be any concern that someone could file a lien in front or in addition to the transfer of equity paperwork and the system will show a pending lien.

The clerk's office will send the secured party a new receipt.

Many county clerks do not permit a transfer of equity in their county. There is no statute that addresses this situation.

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