

2016 Legislative Law Summary – General Enactments



J. Morgan McGarvey

As State Senator David Karem was known for once saying, “The budget is the ultimate policy document in Kentucky,” and, from that perspective, this year proved to be an interesting “budget session” in Frankfort.

A new governor and two legislative chambers controlled by different political parties made the entire process difficult at times. A budget, however, was passed before the April 15th deadline, with the governor using his veto pen on several provisions. But the budget is now final, and the Commonwealth’s spending plan will go into effect at the end of the fiscal year.

En route to the new \$20 billion budget, the legislature also considered a record number of bills over the 60-day session, enacting many of them. Below are some highlights from the legislative session just completed. (Unless a bill is declared an emergency or contains a special effective date, the bills passed by the Kentucky General Assembly this session will take effect July 15, 2016.)

House Bill 303 is the Budget Bill that will guide state spending over the next two fiscal years. The two-year state budget plan is aimed at creating savings in many areas and using more money to stabilize the public pension systems. It includes \$1.28 billion for the state pension systems. Many state agencies were cut, including our institutions of higher education, but the budget makes no cuts to K-12 education and increases pre-school eligibility.

Senate Bill 122 and House Bill 165 make important and helpful changes in Kentucky’s law on title liens. The time in which documents required for notation of a lien on a title must be presented to a clerk is extended from 20 days to 30 days after the debtor first acquires rights in the titled property, a change consistent with bankruptcy law. Additionally, the effective period for an initial title lien is extended to 10 years from the current seven-year sunset. The continuation provisions for title liens are changed to be consistent with UCC continuations, with



a five-year extension of the effective period of the lien and language to make it clear that more than one continuation can be filed.

House Bill 309 allows government and private entities to enter into public-private partnerships – known as P3s – to fund Kentucky’s major infrastructure needs, including transportation projects.

Senate Bill 185 made permanent the Advisory Council on Autism Spectrum Disorders (established in 2013) and the state Office of Autism (created in 2014). The bodies will continue to ensure there are not any gaps in providing services to individuals with an autism spectrum disorder.

Senate Bill 33 requires high school students be taught cardiopulmonary resuscitation (CPR) by an emergency medical professional. The life-saving measure is to be taught as part of the students’ physical education or health class, or as part of ROTC training. *(Continued)*

John McGarvey to Emcee Kentucky Bankers Association Annual Convention



John McGarvey

The Kentucky Bankers Association (KBA) has invited John McGarvey to emcee the KBA Annual Convention. The event will take place on Sept. 17-20, in Palm Beach, Florida. Visit KyBanks.com for more information.

- John T. McGarvey
- M. Deane Stewart
- John A. Majors
- Scott T. Rickman
- Thomas C. Fenton
- Garret B. Hannegan ■
- Melinda T. Sunderland
- Eric M. Jensen ●
- Molly E. Rose ◆
- Timothy A. Schenk
- Thomas W. Volk
- P. Branden Gross
- Ben Crittenden
- Thomas R. Coffey
- J. Morgan McGarvey
- Taylor M. Hamilton ◆
- Bradley S. Salyer ▲
- Laura Crittenden Tipton

OF COUNSEL

- James I. Murray
- M. Thurman Senn
- C. Edward Hastie
- Clyde H. Foshee, Jr.

Elmer E. Morgan
(1919-2010)

David C. Pottinger
(1934-1999)

KEY

- ◆ Admitted KY & IN
- Admitted IN Only
- Admitted KY, IN & OH
- ▲ Admitted KY, IN & TN

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2016 Legislative Law Summary – General Enactments *continued*

Senate Bill 16 protects prospective rescuers from being sued for property damage caused by saving the life of a child left in a locked vehicle.

House Bill 148 allows child daycare centers to receive prescriptions for EpiPen injectors to treat life-threatening allergic reactions. The bill also gives parents up to 30 days to legally surrender their newborn at a state-approved safe place under the state's safe harbor laws.

Senate Bill 179 allows individuals with disabilities to set up an ABLE account to save money for disability-related expenses without it being taxed. Money saved in the account also does not count against Medicaid and other federal means-based benefits.

Senate Bill 193, also known as "Noah's Law" after a 9-year-old Pike County boy, extends health insurance coverage to include expensive amino acid-based elemental formula needed by some children with gastric disorders and food allergies.

House Bill 162 adds electronic communications to those that can be deemed "harassment" under current harassment statutes, if it is done with intent to intimidate, harass, annoy, or alarm another person. "Harassment" is a Class B misdemeanor.

Senate Bill 63, which is aimed at eliminating a backlog of sexual assault examination kits, establishes new policies and procedures for handling evidence. SB 63 requires police to pick up sexual assault kits from hospitals within five days and submit the kit to the state crime lab within 30 days. The bill also prohibits the destruction of any kits and requires notification of victims of the progress and results of the tests.

Senate Bill 60 creates a new section of KRS Chapter 501, defining an "offense against a vulnerable victim" and creating a mechanism for charging someone with commission of an offense against a victim who is under the age of 14, has an intellectual disability, or is physically helpless or mentally incapacitated.

House Bill 132 makes posting jail-booking photos to a website or including the booking photos in a publication illegal when the person is required to pay to remove them from public view. Damages start at \$100 a day for each separate offense, along with attorney fees.

House Bill 40 permits Kentuckians convicted of low-level non-violent felonies to ask a court to permanently expunge their records five years after they have completed their sentences or probation periods. Sex crimes and crimes against children cannot be expunged.

House Bill 314 allows current and retired peace officers to carry concealed firearms at any location where current, on-duty officers can carry guns.

J. Morgan McGarvey

2016 Legislative Law Summary for the Real-Estate Industry



The Kentucky Legislature has adjourned its legislative session, and several bills passed into law and taking effect July 15, 2016, will impact the real-estate industry:

Blighted and Deteriorated Properties – Senate Bill 230 amends a number of statutes related to how local governments handle blighted and deteriorated properties. To encourage redevelopment, the Senate bill has authorized consolidated local governments to establish a tax delinquency diversion program for blighted property under KRS 99.700 to 99.730. Certificates of delinquency for certain property would not be sold for up to five years. The Senate bill also made revisions to various statutes related to the condemnation of blighted and deteriorated properties.

Code Enforcement – House Bill 422 amends a number of statutes related to how local governments handle local code enforcement under KRS 65.8801 to KRS 65.8839. Local governments continue to have a right to a lien for fines, fees, and charges for violations of local code enforcement ordinances, which lien may be superior to those of prior lienholders. The local government must implement a notification system to lienholders in order to obtain lien priority over previously filed liens. The notification system must include an electronic mail registry system and a regularly published list of code violators. The lienholder has the right to abate the violation or pay all fines, fees, and charges for violations within 45 days of notice.

Deeds and Foreclosures – Senate Bill 122 amends KRS 382.110 to provide that grantees at master commissioner judicial sales, pursuant to KRS 426.577, shall record their deeds within five business days of receipt from the master commissioner. House Bill 422 amends KRS 382.135 to provide that a deed shall contain the full name of the grantor and the grantee. At least one title insurer has interpreted "full name" to include the full middle name, not merely a middle initial of the grantor and the grantee. It behooves the General Assembly to clarify what is a "full name." The Uniform Commercial Code sets forth a carefully considered standard in KRS 355.9-503, and some practitioners are recommending the adoption of a similar standard for deeds. This amendment will start a new discussion between the county clerks and practitioners as to what documents a county clerk will accept for recordation.

Mortgages – Senate Bill 122 has amended a couple of statutes related to mortgages. During the last session, KRS 382.290 was amended to require that a mortgage shall specify and refer to the “next immediate source” of the mortgagor’s title to the property. There was some debate among practitioners as to whether the text – “next immediate source” – meant that the mortgage needed to include the source of title of the mortgagor’s grantor rather than the mortgagor’s source of title. KRS 382.290 was amended to resolve that debate by deleting the term “next.” Going forward, a mortgage should contain a statement that plainly identifies the mortgagor’s source of title. That Senate bill also revised the text of KRS 382.297 from “affidavit of amendment *shall not alter* the parties of the collateral of a recorded mortgage” to “affidavit of amendment *may not change* the parties of the collateral of a recorded mortgage.” Also, an affidavit of amendment may now “be used to correct a *manifest clerical or typographical error* such as spelling, punctuation, or numbering mistakes in typing or printing.” This amendment continues the current back-and-forth between the county clerks and practitioners as to what documents a county clerk will accept for recordation.

Recording Offices – House Bill 16 has repealed 1860 Kentucky Acts Chapter 351. Chapter 351 mandated that Kenton County had to have clerk recording offices in both the City of Covington and its county seat located in the City of Independence. It is our understanding that the Kenton County Clerk intends to continue her office in the City of Covington.

P. Branden Gross

Protecting a Lender’s Interest in a Mobile or Manufactured Home in Kentucky



A lender must have a basic understanding of Kentucky law to properly protect its interest in a mobile or manufactured home.

First, the lender must confirm that the mobile home is considered personal property and properly titled in the name of its debtor. Mobile homes are titled in the same manner as motor vehicles and indexed in the Automobile Vehicle Information System (in the county in which the mobile home is located). A lender may confirm a mobile home’s current owner and history by submitting a request to obtain the motor vehicle record to the Kentucky Transportation Cabinet. A mobile home is considered personal property until it is converted to an improvement to real property once the owner surrenders the certificate of title (“Title”) to the county clerk, along with an affidavit of conversion. Thereafter, the mobile home is considered real property and an improvement to the land, and the mobile home no longer has a Title associated with it.

Second, for a purchase loan, the lender must ensure that the mobile home is properly transferred to its debtor. To transfer a mobile home still considered personal property, complete the transaction and assignment portions found on the back of the Title and then present it to the county clerk. Depending upon the date on which the initial Title was issued, the seller may also need to submit an application for title and/or an affidavit for previously owned mobile home to the county clerk. A mobile home converted to real property is properly transferred in a deed recorded with the county clerk.

Third, to further protect its interest in the mobile home, the lender should confirm payment of all *ad valorem* taxes. Current-year and delinquent taxes are collected by the county sheriff and the county clerk, respectively.

Fourth, a lender must properly secure its lien on the mobile home. For mobile homes still considered personal property, the lien is secured once the county clerk of the debtor’s residence (which may be a different county from the location of the mobile home) notes that the lender has filed a title lien statement on the Title. The lien on a converted mobile home is secured with a mortgage recorded with the county clerk in the county in which the real property is located.

Understanding these unique legal issues surrounding mobile homes will assist a lender in protecting its interest.

P. Branden Gross

Awards & Recognitions



L to R: John McGarvey, Senator Morgan McGarvey and Thurman Senn

Senator Morgan McGarvey is the 2016 recipient of the University of Kentucky College of Law’s Young Professional Award. Each year, the UK College of Law recognizes one lawyer who has graduated in the past 10 years and has distinguished herself or himself professionally or in the community.



P. Branden Gross

Branden Gross recently joined Commerce Lexington Inc.’s Public Policy Council. The Public Policy Council consists of approximately 45 volunteer leaders representing a balanced, cross-section of businesses and organizations that are reflective of Commerce Lexington’s overall membership.

M&P would like to congratulate the Kentucky Bankers Association on 125 years of service to Kentucky banks!



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FirmNews

M&P IS PLEASED TO ANNOUNCE:



Tom Coffey

The Brain Injury Alliance of Kentucky board has selected **Tom Coffey** as its next president-elect. Coffey has served on the board since 2012 and previously served as the policy analyst for the Brain Injury Association of America.



P. Branden Gross



Ben Crittenden

Branden Gross and **Ben Crittenden** participated in Commerce Lexington's Leadership Visit to Charleston, S.C., June 8-10.

Branden Gross presented at the Kentucky League of Cities' *Blighted, Abandoned & Dilapidated (BAD) Property Conference* on June 24 in Bowling Green, Ky. Drawing on his experience in real estate law, Branden spoke on the topic, "Dealing with Difficult Landlords." He has handled numerous real estate transactions, including many landlord and tenant negotiations and disputes.

Actual resolution of legal issues depends on many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter. If you have any questions about this newsletter, or suggestions for future articles, contact Eric Jensen, Editor.

If you would like to receive future editions of M&P InBrief electronically, please e-mail us at newsletter@morganandpottinger.com.