

218A.450 Lien on forfeited property -- Action by trustee -- Release of lien.

- (1) The Commonwealth shall have a lien on all property, real or personal, which is forfeit to the Commonwealth by virtue of KRS 218A.410. This lien shall not be defeated by gift, devise, sale, alienation, or any means whatever except by sale to a subsequent bona fide purchaser for value without actual or constructive notice of the lien. The lien shall commence from the time the property becomes forfeit and shall have priority over any other obligation or liability following that time but shall be subordinate to any then existing perfected security interest on the property that is not itself subject to forfeiture.
- (2) The Commonwealth may file on the official records of any one (1) or more counties a forfeiture lien notice of the lien created in subsection (1) of this section. No filing fee or other charge shall be required as a condition for filing the forfeiture lien notice, and the appropriate clerk shall, upon the presentation of a forfeiture lien notice, immediately record it in the official records.
- (3) The forfeiture lien notice shall be signed by an attorney authorized to institute a forfeiture action on behalf of the Commonwealth. The notice shall set forth the following information:
 - (a) A description of the property which is subject to the lien;
 - (b) The name of the owner of record of the property subject to the lien if known;
 - (c) The date and place of seizure or location of any property not seized but subject to forfeiture;
 - (d) The violation of law alleged with respect to forfeiture of the property;
 - (e) A reference to any judicial proceeding pending against the property with reference to forfeiture, including the name of the county or counties where the proceeding has been brought, and, if known at the time of filing of the forfeiture lien notice, the case number of the proceeding, and the name of the defendant;
 - (f) The name and address of the attorney filing the forfeiture lien notice.
- (4) The attorney filing the forfeiture lien notice shall, as soon as practicable after filing, furnish to any owner or lienholder of record either a copy of the recorded notice or a copy of the notice with annotation on it of the county or counties in which the notice has been recorded. Failure to provide a copy of the notice shall not invalidate or otherwise affect the lien.
- (5) In conjunction with any forfeiture proceeding, an attorney representing the Commonwealth may file, without prior court order, in any county, a lis pendens under the provisions of KRS 382.440, and any person acquiring an interest in the subject real property or interest in it, if the real property or interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to any subsequent judgment of forfeiture.
- (6) (a) A trustee who acquires actual knowledge that a forfeiture lien notice or a forfeiture proceeding has been filed against any property to which he holds legal or record title, shall immediately furnish to the attorney representing the Commonwealth the following:

1. The name and address of the holder of the beneficial interest in the property, as known to the trustee;
 2. The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the personal or real property;
 3. If requested by the attorney representing the Commonwealth, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the personal or real property.
- (b) Any trustee who knowingly fails to comply with the provisions of this section is guilty of a Class D felony.
- (7) Any trustee who knowingly transfers or conveys title to personal or real property for which a forfeiture lien notice has been filed at the time of the transfer or conveyance in the county where the personal or real property is located shall be liable to the Commonwealth for the greater of:
- (a) The amount of proceeds received directly from the property named in the forfeiture lien notice as a result of the transfer or conveyance;
 - (b) The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the holder of the beneficial interest in the property named in the forfeiture lien notice; or
 - (c) The fair market value of the interest of the property named in the forfeiture lien notice transferred or conveyed;
- but if the trustee transfers or conveys the personal or real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the discretion of the beneficiary or his designee, the trustee's liability shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.
- (8) The Commonwealth may bring a civil proceeding in any Circuit Court against the trustee to recover from the trustee the amounts set forth in subsection (7) of this section, and the Commonwealth shall also be entitled to recover investigative costs and attorney's fees incurred.
- (9) (a) The provisions of this section shall not apply to any transfer or conveyance by a trustee under a court order, unless the court order is entered in an action between the trustee and the beneficiary.
- (b) Unless the trustee has actual knowledge that property is named in a forfeiture lien notice, this section shall not apply to:
1. Any conveyance by a trustee required under the terms of any trust agreement where the trust agreement is a matter of public record prior to the filing of any forfeiture lien notice; or
 2. Any transfer or conveyance by a trustee to all of the persons who own a beneficial interest in the trust.
- (10) The term of a forfeiture lien notice shall be for a period of six (6) years from the date of filing unless a renewal forfeiture lien notice has been filed, and, in such case, the term of the renewal forfeiture lien notice shall be for a period of six (6)

years from the date of its filing. The Commonwealth shall be entitled to only one (1) renewal of the forfeiture lien notice.

- (11) The attorney who filed the forfeiture lien notice may release in whole or part any forfeiture lien notice or may release any personal or real property or interest in it from the forfeiture lien notice upon the terms and conditions he determines. Any executed release of a forfeiture lien notice shall be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of forfeiture lien notice.
- (12) If no court proceeding to obtain an order of forfeiture is pending against the property named in a forfeiture lien notice at the time of its filing, for purposes only of contesting the notice, it shall be treated as a seizure pursuant to KRS 218A.415.
- (13) An agent of the Commonwealth shall have a continuing right to inspect property against which a forfeiture lien has been placed pursuant to this section and the Commonwealth shall have the authority to stay any civil foreclosure or repossession actions concerning property subject to the lien pending final order of forfeiture.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 445, sec. 8, effective July 13, 1990.