

***THE DUTY OF LICENSEES UNDER
KENTUCKY'S "SLAYER STATUTE" (KRS 381.280) & HOUSE BILL 52***

On March 16, 2011, Governor Beshear signed into law House Bill 52 ("HB 52"), which is described as "an act relating to elder and vulnerable adult abuse, neglect, and financial exploitation and making an appropriation therefor." In this bill, only three (3) chapters of the Kentucky Revised Statutes ("KRS") were changed. Those chapters are: KRS Chapter 41 (the laws that govern Kentucky's Department of Treasury), KRS Chapter 209 (the laws protecting adults), and KRS Chapter 381 (the laws that govern the acquisition of title to property and the restrictions on its use, ownership and alienation).

HB 52 did not involve changes to any of the provisions in KRS Chapter 324—Kentucky's real estate license laws—but it did impose a duty upon licensees of the Kentucky Real Estate Commission ("Commission"). That duty results from the bill's amendments to one of the laws in KRS Chapter 381; specifically, KRS 381.280, which is commonly known as Kentucky's "slayer statute."¹ The following is a brief discussion of that statute and the two (2) amended versions of it that were included in HB 52.

NOTE: The first amendment to KRS 381.280 became effective on June 8, 2011; the second amendment will become effective on January 1, 2012. A copy of each can be accessed from the following link: <http://www.lrc.ky.gov/KRS/381-00/280.PDF>

As originally enacted, KRS 381.280 consisted of only section (1). That section prohibited a killer, who is convicted of a felony, from benefiting from the death of the person that he or she killed. It also included a forfeiture provision, stating that "the person so convicted forfeits all interest in and to the property of the decedent, including any interest he would receive as [a] surviving joint tenant." In addition, the statute provided that "the property interest so forfeited descends to the decedent's other heirs-at-law, unless otherwise disposed of by the decedent."

As stated, the first amendment to KRS 381.280 became effective on June 8, 2011. It adds section (2), which, in essence, is a mandatory advance notice provision that imposes upon "real estate professionals"—as well as "legal and insurance professionals"—a duty "to make reasonable efforts to advise their clients of the provisions of this section [i.e., KRS 381.280], as effective January 1, 2012." The "reasonable efforts" must be made "prior to the execution of documents affected by the provisions of this section." The duty is also included in the 2012 amendment to the statute.

The second amendment to KRS 381.280, which will become effective on January 1, 2012, has four (4) sections. Section (1) of it adds new language in the original section that will, on and after that date, also prevent persons who are convicted of "victimiz[ing] the decedent by the commission of any felony under KRS Chapter 209" from benefiting from the felonious acts identified in that statute.² In addition, section (1) will expand upon the other language that appears in section (1) of the current statute.³

¹ KRS 381.280 is also referred to as Kentucky's "Forfeiture Statute."

²The felonies under KRS Chapter 209 are found in KRS 209.990 (5) and (6). Each requires "a total loss to the [deceased or victimized] adult of more than three hundred dollars (\$300) in financial or other resources, or both." It should be noted that HB 52 also amended KRS 209.990 to include the following new section [section (8)], which became effective on June 8, 2011: (8) If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property as defined in KRS 218A.405 within thirty (30) days of an order by the sentencing court to do so, or is thirty (30) days or more delinquent in a court-ordered payment schedule, then the defendant shall be civilly liable to the victim of the offense or the victim's estate for treble damages, plus reasonable attorney fees and court costs. Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's behalf to enforce this section. The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.

³ The current language, along with the expanded language that is highlighted below, follows: "...and the property interest **or insurable interest** so forfeited descends to the decedent's other heirs-at law, **beneficiaries, or joint tenants**, unless otherwise disposed of by the decedent. **A judge sentencing a person for an offense that triggers a forfeiture under this section shall inform the defendant of the provisions of this section at sentencing.**" [Emphasis added.]

Section (2) in the January 1, 2012 amendment to KRS 381.280—like its 2011 amendment—includes a forfeiture provision. However, the provisions in each are not identical. The 2012 amendment to KRS 381.280 includes a list of forfeiture exemptions rather than simply a statement about forfeiture, which appears in the current statute. Under the 2012 version, an exemption will apply:

- if a will, deed, or insurance policy was executed before January 1, 2012;
- if “the decedent, with knowledge of the person’s disqualification, reaffirmed the [person’s] right...to receive the property by executing a new or modified will or codicil, insurance policy or policy modification, or deed;” and/or
- if the felony conviction under KRS Chapter 209 was committed before January 1, 2012.

Effective January 1, 2012, the forfeited interest referenced in KRS 381.280 will also escheat to the State under KRS Chapter 393, in certain situations. When this happens, the statute requires the Department of the Treasury, “after liquidation of the interest, [to] pay the proceeds into the elder and vulnerable adult victims trust fund established in KRS 41.305.” This authority is established in section (3) of the 2012 amendment. Finally, the last section in the law that will become effective on January 1, 2012—like the last section in the current law—includes the aforementioned notice provision and duty imposed upon licensees.

If a licensee has a client who seeks legal advice concerning the application of KRS 381.280, then the licensee should advise the client to contact a private attorney. **NOTE: NEITHER A LICENSEE NOR THE COMMISSION CAN PROVIDE THIS SERVICE.** Licensees are not authorized to provide it because they do not possess a license to practice law, and the Commission lacks jurisdiction over such matters because Kentucky’s “slayer statute” (KRS 381.280) is not included in Kentucky’s real estate license laws, KRS Chapter 324.

PLEASE ALSO NOTE that the Commission-approved listing and purchase contracts, which can be accessed from the Commission’s website (www.krec.ky.gov), have been revised to include the following notice concerning KRS 381.280:

Notice: Each party to this contract, who is also the client of a real estate agent, hereby acknowledges that his or her agent has reasonably notified him or her about the provisions of KRS 381.280, as effective January 1, 2012 and as required under that statute, which is known as Kentucky’s “Forfeiture Statute” and commonly referred to as Kentucky’s “Slayer Statute.”