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MECHANICS' LIENS—POTENTIAL PITFALL FOR THE HOMEOWNER

Kentucky provides persons who furnish labor or materials for the improvement of the real property of another with the right to a statutory lien upon that property—the so-called mechanics' lien—to secure payment for their services and materials.¹ These statutory provisions in Kentucky are by no means anomalous to the American legal system; all fifty states and the District of Columbia have statutory or constitutional² provisions granting the right to a mechanics' lien.³

Statutes establishing mechanics' liens were originally drafted to prevent unjust enrichment of owners of real property at the expense of workmen.⁴ They also encourage building artisans to ply their trades⁵ and stimulate construction by facilitating the extension of credit by suppliers of building materials.⁶

These statutes can, however, entrap the unwary owner of real property, causing him to bear considerable expense or even to forfeit his property to answer for the shortcomings of contractors or materialmen who fail to pay their suppliers or laborers.⁷ We shall examine the inequitable manner in which the statutory right to mechanics' liens can operate against the small property owner⁸ and suggest how current statutes might be amended to protect the homeowner.

¹ Ky. Rev. Stat. ch. 376 (1971) [hereinafter cited as KRS].

² Kentucky's Constitution makes no provision for mechanics' liens.

³ See 53 AM. JUR. 2d *Mechanics' Liens* § 5 (1970).

⁴ *In re Heat 'N' Eat Brands, Inc.*, 175 F. Supp. 597 (W.D. Ky. 1959).

⁵ *Egyptian Supply Co. v. Boyd*, 117 F.2d 608 (6th Cir. 1941); *In re Heat 'N' Eat Brands, Inc.*, 175 F. Supp. 597 (W.D. Ky. 1959); *Hodges v. Quire*, 174 S.W.2d 9 (Ky. 1943).

⁶ It is interesting to note that the first mechanics' lien law enacted in the United States was enacted by the General Assembly of Maryland in 1791 at the urging of Thomas Jefferson and James Madison, who championed such legislation to stimulate and encourage the rapid building of the City of Washington.

Freeform Pools, Inc. v. Strawbridge Home for Boys, 179 A.2d 683, 685 n.1 (Md. 1962).

⁷ See *Hodges v. Arvidson*, 66 S.W. 601 (Ky. 1902), for a classic example of entrapment. Owners of a lot in Lexington, Kentucky, contracted with a builder to erect a house on the lot. After the house was completed, the owners paid the contractor in full. Several months later, materialmen obtained a lien against the property for the value of materials furnished the contractor, even though the owners had been unaware that the materialmen had had any claim at the time they paid their contractor. For a report of more recent (unlitigated) instances of unwary homeowners allegedly being entrapped by mechanics' liens, see *The Courier-Journal & Times* (Louisville), February 18, 1973, § A, at 1, col. 1.

⁸ The discussion here is limited to mechanics' liens against privately owned real property. KRS ch. 376 also deals with liens against real property affected with a public interest and against personal property such as automobiles.

Theory and Operation of the Statutes

Unknown at common law, mechanics' liens are exclusively statutory.⁹ The lien attaches to the property interest¹⁰ of the owner, giving rise to a cause of action in rem.¹¹ While the various state statutes vary considerably,¹² most provide that a mechanics' lien may attach against the ownership interest only of a person who has contracted or otherwise agreed¹³ to have improvements made upon his property. Once he has so agreed, he may have no control over who shall contribute labor or materials to the improvement,¹⁴ yet all such contributors acquire the right to a mechanics' lien if they are not paid.

State statutory schemes are commonly divided into two groups, referred to as the "New York system" and the "Pennsylvania system."¹⁵ The distinguishing feature of the New York pattern is that the amount of the claimant's lien is limited to the amount due the original contractor from the owner. Multiple lienors are entitled only to a pro rata share of the amount due.¹⁶ Under the Pennsylvania system, on the other hand, each claimant's lien attaches to the full extent of the fair value of his contribution, regardless of the state of the account between the owner and his contractor.¹⁷ The resulting liability which the property may incur under the Pennsylvania system is unlimited. Under this pattern, payment by the owner of all or part of the contract price to the original contractor is no defense against the liens of subcontractors and materialmen if the contractor has failed to pay these individuals for their contributions to the improvement.

Kentucky's present mechanics' lien statute¹⁸ conforms to the Penn-

⁹ *In re Louisville Daily News & Enquirer*, 20 F. Supp. 465 (W.D. Ky. 1937).

¹⁰ The lien attaches only to the interest in the property held by the person contracting or consenting to the improvement. Thus an improvement made at the instances of a lessee will give rise to a lien against the leasehold only and not against the lessor's interest, unless it can be shown that the lessor consented to the improvement. *Campbell & Summerhays, Inc. v. Greene*, 381 S.W.2d 431 (Ky. 1964). The lien may attach to equitable as well as to legal interests. *Hines v. Hollingsworth-Young Hardware Co.*, 198 S.W. 716 (Ky. 1917).

¹¹ *Powers v. Brewer*, 38 S.W.2d 466 (Ky. 1931).

¹² See 53 AM. JUR. 2d *Mechanics' Liens* § 7 (1970).

¹³ KRS § 376.010(1) expressly requires that the owner's consent be written. See *Cincinnati Stucco Co. v. North Kentucky Fair, Inc.*, 291 S.W. 715 (Ky. 1927) (verbal consent insufficient to give rise to a lien).

¹⁴ *N.O. Nelson Mfg. Co. v. Mann*, 71 S.W. 851 (Ky. 1903); *Hodges v. Arvidson*, 66 S.W. 601 (Ky. 1902); *Hightower v. Bailey*, 56 S.W. 147 (Ky. 1900).

¹⁵ 4 AMERICAN LAW OF PROPERTY § 16.106F (A.J. Casner ed. 1952); 53 AM. JUR. 2d *Mechanics' Liens* § 8 (1970); 57 C.J.S. *Mechanics' Liens* § 105 (1948).

¹⁶ *Nicholas v. Miller*, 30 S.E.2d 696 (Va. 1944).

¹⁷ *A. & S. Spengler v. Stiles-Tull Lumber Co.*, 48 So. 966 (Miss. 1910).

¹⁸ KRS § 376.010. The language of this section is substantially the same as that appearing in Ky. STAT. ANN. § 2463 (Carroll 1930), as amended, KRS § 376.010, which was originally enacted as Ky. Acts ch. 151 (1893). Mechanics' lien laws were first enacted in Kentucky for the benefit of various craftsmen and laborers on a city by city basis. The first of these was enacted for the benefit of Louisville's materialmen in 1831. Ky. Acts ch. 686 (1831).

sylvania system, but the most invidious aspect of that system—the unlimited liability which can accrue to the property—has been modified by a provision that the aggregate amount of mechanics' liens which can attach to the property may not exceed the amount of the original contract price.¹⁹ Therefore the maximum amount which the Kentucky property owner may be forced to pay for an improvement is *twice* that for which he originally contracted.²⁰

It is apparent that the application of the laws of mechanics' liens to a given situation may produce both equitable and inequitable results, and that the magnitude of inequities may vary depending upon whether the laws of the jurisdiction are patterned on the New York or the Pennsylvania system. Preventing the unjust enrichment of the property owner is achieved under either system, for the owner must pay *at least* the amount for which he contracted.²¹ The protection afforded subcontractors, laborers and materialmen is complete under the pure Pennsylvania system and relatively so under Kentucky's modified version. This protection is consistent with the principle

¹⁹ The last sentence of KRS § 376.010(1) reads:

The lien shall not be for a greater amount in the aggregate than the contract price of the original contractor, and should the aggregate amount of the liens exceed the price agreed upon between the original contractor and the owner there shall be a pro rata distribution of the original contract price among the lienholders.

²⁰ An example may serve to illustrate the differences in the systems. Assume owner *O* contracts with contractor *C* for an improvement at an agreed cost of \$2000. *C*, with or without *O*'s knowledge, subcontracts with *X* to do the work. *X* hires *Y*, a laborer, and obtains lumber from *Z*, a materialman. After the job is completed, *O* pays *C* in full, but *C* for some reason (insolvency, dishonesty) fails to pay subcontractor *X* who in turn is unable to pay laborer *Y* and materialman *Z*. Assume further that the fair value of the contributions made by *X*, *Y* and *Z* amounts, in the aggregate, to \$2500. Given this situation, *X*, *Y* and *Z* will have remedies which will vary depending upon the type statute in effect. Under the New York system, their liens depend upon the state of the account between *O* and *C*, and since *O* owes nothing, they can have no lien. Under the Pennsylvania system, the fact that *O* has paid *C* avails him naught; *X*, *Y* and *Z* may still look to *O*'s property as security and if they comply with the procedural technicalities for placing, perfecting and enforcing their liens, they will prevail. *O* must pay their claims in full or their liens will attach to his property, which may be sold to satisfy the liens. Under Kentucky's "modified Pennsylvania system," *O*'s payment to *C* is, again, no defense to the claims of *X*, *Y* and *Z*. His only protection is the fact that the liens of *X*, *Y* and *Z* cannot exceed, in the aggregate, \$2000—the amount for which *O* initially contracted with *C*—and their claims will be adjusted downward pro rata. Thus *O*, having contracted for a \$2000 improvement, may end up paying \$2000 under the New York system, \$4500 under the Pennsylvania system, and \$4000 in Kentucky.

²¹ It could, of course, be possible for a contractor to so seriously underbid a job that the total value of labor and materials furnished would exceed the contract price. The owner could be unjustly enriched in such a situation, for even if the contractor took nothing for his efforts, the maximum amount of mechanics' and materialmen's liens for which the owner's property would be liable would be less than the fair value of the improvement. This state of affairs might be brought about by a very inefficient contractor or it could result from unexpected inflation in the cost of materials occurring between the time of the original contract and the time when the materials were required.

upon which the Pennsylvania system is based: "That principle is that everyone who by his labor or materials has contributed to the preservation or enhancement of the property of another thereby acquires a right to compensation."²²

The property owner's only effective defense is knowledge of the law.²³ He should be aware, for example, that once he has entered into an agreement with a building contractor the law of mechanics' liens confers upon the contractor a broad statutory power of agency by virtue of which he can appoint additional sub-agents (subcontractors), who in turn can appoint other sub-agents, *ad infinitum*, all of whom acquire the right to subject the owner's property to a lien by contributing labor or materials to the improvement.²⁴ The owner is powerless to contract in such a manner as to protect himself against the statutory vesting of the power of agency in his contractor, or in the subcontractors selected by the contractor.²⁵ It is irrelevant whether

²² *Jones v. Hotel Co.*, 86 F. 370, 374 (6th Cir. 1898). The lengthy opinion in this case includes an extensive discussion of the statutes and case law of various jurisdictions in which Pennsylvania type mechanics' lien laws were in effect at the time.

²³ This was made clear by the Court of Appeals in the first case which challenged the constitutionality of the present mechanics' lien law. Quoting from a Minnesota case, the court said:

. . . [T]he owner must be held to a knowledge of the existing law on the subject, and to the presumption that he employed the original contractor and gave out his work with reference to that law.

Hightower v. Bailey, 56 S.W. 147, 148 (Ky. 1902).

²⁴ The right of lien to subcontractors and materialmen is, by operation of law, incorporated into and made a part of the owner's contract, as much as if expressly concluded and written therein.

Id.

²⁵ There is a split in authority among the various states as to whether an owner can free his property of liability for mechanics' liens by inserting a clause in the contract entered into with his contractor to the effect that the improvement will be completed free of liens. See 57 AM. JUR. 2d *Mechanics' Liens* § 336 (1970). Kentucky has no statute which speaks to this point. In the most recent Kentucky case to consider the question, the Court of Appeals seems clearly to align itself with the group holding that the owner cannot free himself of liability:

The rule in a substantial number of jurisdictions (which rule we think is sound) is that an owner who has employed a contractor to construct a building for him cannot free himself of lien liability by inserting a provision in the contract that the contractor shall erect the building free of liens.

. . . .

Under a liberal construction the laborers and materialmen should be protected where the work is done and the materials furnished by contract with an agent of the owner or by written consent of the owner, notwithstanding an attempted disclaimer of liability by the owner, even placed of record.

Campbell & Summerhays, Inc. v. Greene, 381 S.W.2d 531, 532-33 (Ky. 1964). The peculiar facts in this case should perhaps be noted. The "contract" was not a contract between the owner and a building contractor, but actually a lease which by its terms required the lessee to erect a building on the premises "free and clear of all liens." Subsequent to the start of construction, the lessee defaulted, the lease was forfeited, and laborers and materialmen filed their liens against the lessor.

the owner has knowledge of who is contributing labor or material to the improvement,²⁶ and in the recent case of *Campbell & Summerhays, Inc. v. Greene*,²⁷ the Court of Appeals held that the converse is true as well—the laborer or materialman need not know who the owner is. Finally, the property owner should be aware that it is the consistent and announced policy of Kentucky courts to construe mechanics' lien statutes liberally in favor of lienors.²⁸

What defenses does the property owner have against claimant subcontractors, materialmen or laborers who unexpectedly surface after the owner has paid his contractor in full? Within a specified period following completion of the claimant's contribution, the owner has *no* legal defense at all, as evidenced by the case of *N.O. Nelson Manufacturing Co. v. Mann*:²⁹

The owner of the building, in cases like the one involved here, pays money to his contractor at his peril. It is immaterial whether he knows of the claim or not. The statute casts upon him the duty, to the extent of the full contract price of the improvement to be made, of seeing to it that the materialmen who have furnished material for the work provided for by the contract are paid. No payments made by him to his contractor will relieve him of this duty.³⁰

The claimant who has acquired the right to a mechanics' lien will lose that right if he does not notify the owner of his claim and his intention to file a lien within a specified period following the last day upon which he contributed to the improvement. This period is 75 days for claims of less than \$1000 and 120 days if the claim exceeds \$1000.³¹ The lien itself need not be filed until six months after the last day on which the claimant ceased to furnish labor or materials for the improvement.³² Consequently, until the expiration of the notification period, the owner has no assurance that his property has not become subject to a "hidden lien."³³ His only complete defense against

²⁶ *N.O. Nelson Mfg. Co. v. Mann*, 71 S.W. 851 (Ky. 1903); *Hodges v. Arvidson*, 66 S.W. 601 (Ky. 1902).

²⁷ 381 S.W.2d 531 (Ky. 1964).

²⁸ See, e.g., *Hodges v. Quire*, 174 S.W.2d 9 (Ky. 1943); *Ohio Oil Co. v. Smith Haggard Lumber Co.*, 156 S.W.2d 111 (1941).

²⁹ 71 S.W. 851 (Ky. 1903).

³⁰ *Id.* at 852.

³¹ KRS § 376.010(3).

³² KRS § 376.080.

³³ The term "hidden lien" is used in KENTUCKY LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT No. 27, STATUTORY LIENS 3 (1965) [hereinafter cited as STATUTORY LIENS]:

KRS § 376.010(3) is aimed at the "hidden" liens of those not in privity with the owner that the owner needs to, but seldom does, know about in order to work something out with the lienors so as to protect himself. The problem with our "notice" statute is that the notice is not required to be given soon enough.

hidden liens is to wait out the statutory period before paying anything to his contractor. Otherwise he pays the contractor at his peril unless he has somehow determined the identity of all possible mechanics' lien claimants and has obtained waivers from them. Furthermore, to be valid an express waiver of the right to assert a mechanics' lien must be supported by consideration.³⁴

Defenders of Kentucky's mechanics' lien laws point out that the property owner has the following "defenses": (1) he can contract only with reputable contractors, (2) he can seek legal advice before entering into any contract, (3) he may require a payment or performance bond of the contractor.³⁵ While these "defenses" are surely used by property owners involved in large-scale construction projects such as shopping centers and apartment complexes, it is submitted that they are particularly inappropriate for the small homeowners contemplating the typical home improvement project. No one would seriously maintain that the homeowner shopping for wall-to-wall carpeting at the local carpet center should defer signing an order for the purchase and installation of the carpeting until he has consulted with an attorney. Nor does the average homeowner have access to the necessary credit appraisal mechanisms to evaluate the probability that the carpet dealer will not pay the manufacturer for the carpeting or the workers for installing it. Insisting that the dealer be bonded will, as a practical matter, greatly restrict the list of dealerships at which his order will be accepted.

In actual practice, the typical homeowner, when he contracts for a minor home improvement, does so in ignorance of the law and at great *potential* risk to his property. That he can do so in most cases without suffering dire consequences is due not to the provisions of the law but to the fact that the vast majority of American businessmen and contractors are reputable, honest, and often willing to forego their legal right to a mechanics' lien in order to preserve the good will which they enjoy in the community. Unfortunately, this very climate makes it easier for the financially unsound or disreputable "fly-by-night" home improvement contractor to entrap the unwary homeowner. The result may be one of those rare, but by no means non-existent instances where a homeowner learns to his dismay that a mechanics' lien is being filed against his property several weeks after

³⁴ *McCorkle v. Lawson & Co.*, 259 S.W.2d 29 (Ky. 1953).

³⁵ These alternatives were stressed by several home improvement contractors, suppliers and attorneys interviewed during the preparation of this comment, all of whom were unsympathetic to the unwary homeowner's plight and none of whom were willing to be quoted. See also *Courier-Journal & Times*, *supra* note 7, at § A, at 28, col. 1.

he has paid his contractor in full. The question to be considered, then, is whether it would be worthwhile to modify existing statutes to provide the protection needed by the small percentage of homeowners who may be injured.

Justification for Modification of the Law

The foregoing discussion has deliberately focused upon the potential inequities which may result from the application of mechanics' lien statutes to the individual homeowner. In any consideration given to possible modification of the statutes, however, one must bear in mind that mechanics' lien laws also apply to large business organizations. For the large corporation undertaking a major construction project, mechanics' liens may be more beneficial than evil. It would be much more difficult, for example, to finance such large undertakings were it not for the security offered those who contribute to the completion of the projects by a statute permitting them to look to the improved property to secure payment if necessary.³⁶ Unfortunately, our mechanics' lien statutes do not differentiate between large and small property owners; an individual homeowner is charged to the same extent as the largest corporate owner with serving as the guarantor of a contractor's obligations to subcontractors, materialmen and laborers.

Subcontractors and materialmen are also businessmen, and because they are active in the construction industry, they can be expected to be more familiar with mechanics' lien statutes than a typical homeowner. Moreover, they are in a better position to be aware of the prime contractor's reliability.

Among potential lienors, laborers are perhaps most deserving of protection. Since the advent of labor unions, however, laborers are afforded protection not available to them in 1893 when our present system of mechanics' liens was enacted. Unions forbid members to remain on a job when they have not been paid, or even when the contractor is in arrears in payments to members of other unions or on other jobs.³⁷ As a result, very few mechanics' liens are filed by laborers.

In view of these factors, it does not seem unrealistic to speak of re-examining the priorities of protection afforded by the statutes. Modifications designed to afford greater protection to the individual homeowner vis-a-vis corporate contractors and suppliers, if found

³⁶ See generally 5 AMERICAN LAW OF PROPERTY § 16.106H (A.J. Casner ed. 1952).

³⁷ See STATUTORY LIENS 15.

to be justified, would be consistent with the modern trend toward enacting consumer protection laws.

The need for modernization has not gone unrecognized; studies of possible improvements have been undertaken in Kentucky³⁸ and in other jurisdictions.³⁹ Suggested solutions include mandatory licensing of contractors and subcontractors, mandatory bonding of contractors, optional bonding of owners as a statutorily authorized alternative to liability for mechanics' liens, and combinations of all of these. While some steps have been taken elsewhere in the form of statutory revisions to provide greater protection to property owners, none have been taken in Kentucky.⁴⁰

One explanation for legislative lethargy in this area may be that most proposals foresee all-inclusive revamping of the entire body of statutes providing for mechanics' liens. Proposed legislation of this nature would be certain to encounter opposition from legitimate vested interests in the construction and supply industries and from lending institutions.⁴¹ Few proponents of change seem willing to identify individual homeowners as a class separable from the mass of other property owners who constitute the significant customers of construction and lending interests, such as governmental entities, public utilities, land developers, speculative home builders, and other commercial enterprises large and small.⁴² The inequities of the present law bear upon the homeowner in a peculiar manner, and unless special provisions can afford him protection not required by other types of property owners, his interests will be as little protected under any revised statutory scheme as they are now.⁴³

³⁸ STATUTORY LIENS is such a study.

³⁹ See, e.g., Cutler & Shapiro, *The Maryland Mechanics' Lien Law—Its Scope and Effect*, 28 MD. L. REV. 235 (1968); Stalling, *The Need for Special Simplified Mechanics' Lien Acts Applicable to Home Construction*, 5 LAW & CONTEMP. PROB. 592 (1938); Comment, *The "Forgotten Man" of Mechanics' Lien Laws—The Homeowner*, 16 HASTINGS L.J. 198 (1964).

⁴⁰ Instead, recent amendments to KRS ch. 376 have been designed to further enhance the position of lienors at the expense of property owners. The 1972 amendments to KRS § 376.010 assure lienors interest on the amount of their liens from the date of attachment and extend the notification period to 120 days from 90 days on claims exceeding \$1000. Enactment of a new section, KRS § 376.135, provides for a lien on farm corps for service by a custom operator.

⁴¹ See generally HANDBOOK OF COMMISSIONERS ON UNIFORM STATE LAWS 150 (1943) for a discussion of the opposition to the Uniform Mechanics' Lien Act, which led to its demise.

⁴² An exception is Stalling, *The Need for Special Simplified Mechanics' Lien Acts Applicable to Home Construction*, 5 LAW & CONTEMP. PROB. 592 (1938).

⁴³ This is the very shortcoming which obtains in the proposed revision of KRS ch. 376 contained in STATUTORY LIENS 15-16.

This plan is not complete. It would not provide protection for one whose improvement is financed out of his cash reserve or out of the proceeds of a loan not secured by an encumbrance on the property. Where the

(Continued on next page)

Solution Which Might Afford Protection to the Homeowner

The homeowner, as we have seen, is presently charged with knowledge of the law of mechanics' liens with all its complications.⁴⁴ Whether these complications are necessary to facilitate large construction projects has not been examined. If they are, they must remain as features of the statutes, but the typical homeowner of today cannot realistically be said to understand them⁴⁵ and, in the absence of special statutory safeguards not needed by more sophisticated property owners, he will continue to be exposed to potential entrapment. His situation could be improved by relatively simple amendments to existing statutes.

The first and foremost protection which the unsophisticated homeowner needs is protection against the "hidden liens" which result when subcontractors, materialmen or artisans acquire the right to a lien without the knowledge of the owner and without being required to notify the owner of their claims until long after the improvement is completed and paid for. Instead of being able to delay notification of the owner of an impending claim until 75 days after his contribution is completed (120 days if over \$1000), it would be more realistic to require the potential lienor to notify the owner as soon as reasonably possible after acquiring the right to rely upon the owner's property for his payment. Notification should be required *before* the claimant enters upon the performance of his contribution, if possible, but in

(Footnote continued from preceding page)

work consists of a small alteration the losses would not be great. And in those relatively few instances where the owner has the cash or credit to finance an improvement, he is more likely to realize the need to consult an attorney in order to protect himself.

As can be seen from this paragraph, the very individual who needs protection from the complicated mechanics' lien laws is the one who would not get it under this proposed revision. If the homeowner's improvement is financed by a loan which does encumber the property, the lending institution's legal staff will insure that no mechanics' liens will attach to the property. Where the work consists of a small operation which the owner can finance himself, however, it is hard to see how he will be any more likely in the future than at present to realize the need to consult an attorney before entering into a contract for a small improvement. To dismiss his plight with a comment that "the losses would not be great" puts the unwary owner right where he is under existing statutes.

⁴⁴ Notes 23 & 24 *supra* and accompanying text.

⁴⁵ One student writer has offered the following explanation for the homeowner's chronic inability to understand or be aware of mechanics' lien laws:

He is accustomed to purchasing personalty on credit, and realizes that his automobile or television set can be repossessed only if he should breach his installment sales contract. He has no reason to believe that he can lose his entire interest in his land and the house he is building even though he complies strictly with every fineprint term of his construction contract.

Comment, *The "Forgotten Man" of Mechanics' Lien Laws—The Homeowner*, 16 HASTINGS L.J. 198, 206 (1964).

no event later than ten days following the agreement with the prime contractor which confers the right. Failure to give timely notification should negate the right to the lien. If delayed notification serves some purpose in large construction projects, the early notice requirement could be made to apply only to improvements to residential property consisting of no more than one family residence. It certainly should be no imposition for the subcontractor or laborer to determine whether he is working on a single family residence. The materialman, who is charged under existing law with knowledge of exactly the real property for which he is furnishing materials as a prerequisite to the validity of his lien,⁴⁶ and who in most cases will deliver the materials to the building site, would also not suffer a hardship if required to know whether the project involves the improvement of a single family residence.

A possible rewording of Kentucky Revised Statutes § 376.040(3) [hereinafter referred to as KRS] to afford the needed protection might be as follows (new words are italicized):

No person who has not contracted directly with the owner or his agent shall acquire a lien under this section unless he notifies in writing the owner of the property to be held or his authorized agent, within seventy-five days on claims amounting to less than \$1000.00 and one hundred twenty days on claims in excess of \$1000.00 after the last item of material or labor is furnished, of his intention to hold the property liable and the amount for which he will claim a lien; *provided, however, that in all cases where the property to be held is wholly residential in character and consists of or provides no more than one family unit, said notice must be effected within ten days after entering into a contract or agreement to furnish material or labor.* It shall be sufficient to prove that the notice was mailed to the last known address of the owner of the property upon which the lien is claimed, or to his duly authorized agent within the county in which the property to be held liable is located.

The second potential inequity against which the homeowner should be protected is the danger that he may have to pay twice the amount for which he initially contracted. While prompt notification from potential lienors would serve to put the owner on his guard and cause him to make inquiries before paying his contractor in the majority of cases, it would not protect the owner who had paid his contractor before receiving the notices. Many small home improvement jobs such as paving a driveway or installing aluminum siding are capable of completion in a day or two and the contractor may have collected

⁴⁶ McCorkle v. Lawson & Co., 259 S.W.2d 29 (Ky. 1953).

from the owner before the ten days have elapsed. To afford the owner complete protection, KRS § 376.010(1) could be amended so that mechanics' liens would attach to property consisting of a single family residence only to the extent of the amount due the contractor from the owner at the time the owner received notification of the lienor's claim. In other words, Kentucky should adopt a modified New York system of mechanics' liens insofar as the property against which the lien attaches constitutes property *wholly residential* in character and consisting of or affording no more than one family unit.⁴⁷

Possible wording for this amendment might be to add the following at the end of the last sentence in KRS § 376.010(1) (new words are italicized):

The lien shall not be for a greater amount in the aggregate than the contract price of the original contractor, and should the aggregate amount of the liens exceed the price agreed upon between the original contractor and the owner there shall be a pro rata distribution of the original contract price among the lienholders; provided, however, that in all cases where the property to be held is wholly residential in character and consists of or provides not more than one family unit, the lien or liens shall not be for a greater amount in the aggregate than that due the contractor from the owner at the time the owner receives the notification provided for in subsection (3) of this section.

Minnesota has recently enacted amendments to its mechanics' lien statutes which incorporate essentially the same features as those recommended here.⁴⁷ It is apparent that the legislature of that state has recognized the plight of the small property owner and has taken steps to afford him a degree of protection commensurate with his present economic status in relation to potential lienors. It is submitted that the Kentucky General Assembly should at this time look to the example set by a sister state and re-examine its own mechanics' lien statutes with a view to effecting modifications necessary to provide a greater degree of protection for the individual homeowner.⁴⁸

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⁴⁷ Ch. 247, [1973] Minn. Sess. Laws (effective July 1, 1974). The Minnesota Legislature saw fit to set the time limit for notification of the owner by potential lienors at no later than twenty days following the first day on which labor or materials are furnished for the improvement. The cut-off point below which provisions of the New York system are to operate has been set at improvements constituting four residential units or less if the property is wholly residential in character, or at 10,000 or less usable square feet of floor space if the property is not wholly residential.

⁴⁸ It is interesting to note that, according to the opinion of the Court of Appeals in *Hightower v. Bailey*, 56 S.W. 147, 148 (Ky. 1900), the mechanics' lien laws enacted by Kentucky in 1893 were "seemingly copied" from Minnesota's statutes of that time.