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Kentucky Amends Its Mortgage Amendment Statute

The Kentucky statute governing amendments to mortgages, KRS § 382.297, was recently revised by House Bill 488 to provide clarity around when a county clerk should accept an amendment to a mortgage for recording. The changes went into effect on July 15, 2024.

Clerks to Record Any Amendment, Renewal, Modification or Extension

Under the modified KRS § 382.297, Kentucky county clerks are required to record **any** amendment, renewal, modification, or extension of a recorded mortgage, including those that make substantive changes such as changing the terms, dollar amounts, and the property being encumbered, as long as the document complies with the statutory requirements.

This statutory change was made to provide consistency in the statute's interpretation across the Commonwealth of Kentucky. The previous version of KRS § 382.297 was open to interpretation given its focus on affidavits of amendment prepared by attorneys to correct clerical errors or omitted information.^[1] The statute was also titled "Amendment of recorded mortgage *by affidavit of amendment*" (emphasis added).

Within the previous version of KRS § 382.297, there was one portion of the statute that stated, "an amendment may not change any term, dollar amount, or interest rate in the mortgage, unless signed by the mortgagor and the secured party." Proponents of recording mortgage amendments to do things other than correct clerical errors pointed to that portion of the statute in support of their position. Even the Kentucky Attorney General opined support of this particular interpretation of the previous version of KRS § 382.297.^[2] However, because this statutory language was contained within a section that specifically related to affidavits of amendment, some clerks still believed that Kentucky statutes did not permit the

recording of mortgage amendments that were not affidavits of amendments, or if they did, it was limited to changing the term or decreasing the dollar amounts.

Following the effective date of the revised KRS § 382.297, county clerks who historically limited the types of mortgage amendments that may be recorded seem to be accepting mortgage amendments that amend other terms, so long as the mortgage amendment complies with the statutory requirements set forth in KRS § 382.297.

What are the statutory requirements?

A mortgage amendment, renewal, modification, or extension of a recorded mortgage must:

- Be in writing;
- Contain the name and mailing address of mortgagor and mortgagee;
- Contain the book and page reference for the original mortgage;
- Include a description of the modification;
- Include a signed endorsement with the preparer's name and address;
- Include the delivery address for the recorded instrument;
- Contain the signatures of all parties acknowledged before a notary public; and
- Be recorded in the county clerk's office where the original mortgage is located.

What must be included in the description of the modification?

For the description of the modification, in addition to describing the amendments being made, the mortgage amendment document must provide the maturity date of the indebtedness secured by the mortgage to be in compliance with KRS § 382.330.

Additionally, to satisfy the description of the modification when you are extending the maturity date, the time period of the extension and the amount of indebtedness remaining due must be included in the mortgage amendment, pursuant KRS § 382.297 (2)(b)(4)(b)(ii).

How do I satisfy the “time period of the extension” and “the amount of indebtedness remaining due”?

For extensions, we recommend having a separate section in the mortgage modification referring to KRS § 382.297 and setting forth the time period of the extension and the amount of indebtedness, even if each item is already stated elsewhere in the document.

The time period of the extension may mean the number of months or years between the existing maturity date and the extended maturity date, rather than just stating the specific date.

With respect to the amount of indebtedness remaining due, we do not have a definitive answer yet regarding what the county clerks are looking for here other than that they will look for a specific number. For a term loan that has decreased since the recording of the original mortgage, the amount of the indebtedness remaining due may be a lower amount. If the mortgage is intended to secure the term loan and other loans to the same lender, the amount may be the face amount of the term loan plus the amount of the additional indebtedness secured by the original recorded mortgage. For a mortgage that secures a revolving loan, we recommend using the face amount of the note evidencing such revolving loan.

In addition to stating the time period of the extension and the amount of indebtedness remaining due, some clerk’s offices have expressed a preference that whether the document is an extension be stated early on in the modification. Including “extension” in the title of the document can help make this abundantly clear.

Conclusion

The recent revisions to the Kentucky mortgage amendment statute will constitute a change in procedure for many county clerk's offices. Each county clerk's office may still have preferences regarding the formatting of such documents or how the information related to fulfilling the statutory requirements is included in the documents. Before submitting a mortgage amendment for recording, we recommend calling the relevant county clerk's office to confirm that the document signed by the parties is acceptable for recording by such county clerk. It may also be helpful to send a draft to the county clerk's office to review in advance of any submission for recording.

We anticipate more updates to KRS § 382.297 may follow in upcoming legislative sessions to clarify questions that come up when the revised statute is put into practice. Please contact [Becky Moore](#), [Anthony Crawford](#) or anyone in the firm's [Commercial Finance](#) and [Real Estate](#) practice groups if you need assistance with amending mortgages in Kentucky or if you have any other questions.

[\[1\]](#) Similar to the previous version of KRS § 382.297, affidavits of amendments to mortgages may continue to be recorded to fix clerical errors and omitted information in the original mortgage.

[\[2\]](#) See Ky. OAG 09-002 (March 20, 2009).

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