

**381.636 Findings required by commissioners in condemnation of underground passageway -- Basis of compensation -- Immediate possession.**

All of the provisions of the Eminent Domain Act of Kentucky shall be applicable for the purposes of KRS 381.635 and this section, except as follows:

- (1) The commissioners shall be required to find, in addition to their other findings, that access over the surface of the land would be impracticable, and that the use or making and use of the shafts, slopes, passageways or entries would not cause undue or unreasonable inconvenience to the owner thereof.
- (2) Compensation shall be determined in accordance with what will constitute just compensation to the owner of the shafts, slopes, passageways or entries for the use thereof, and not on the basis of an actual taking of the land. Where the right to make a shaft, slope, passageway or entry is condemned, the condemnor shall be required to pay compensation for the value of any merchantable coal or other mineral that may be removed from the land in making the shaft, slope, passageway or entry, and for any incidental damages arising therefrom.
- (3) At the time of examining the report of the commissioners, the court shall enter an order granting the applicant the immediate use of the right of access sought to be condemned, notwithstanding the filing of exceptions by the owners, if:
  - (a) The report of the commissioners favors condemnation; and
  - (b) The person seeking condemnation has paid into court the amount of compensation fixed by the commissioners, and has filed with the court a bond, with sureties approved by the court, conditioned upon his paying to the owner or owners the difference between the sum paid into court and that which may thereafter be finally determined, in the proceeding, to be the value of the right of access, and further conditioned that, if it is finally determined in the proceeding that the person is not entitled to condemn the right of access, he will pay to the owner or owners damages for his use pending such final determination.

**Effective:** January 2, 1978

**History:** Amended 1976 (1st Extra Sess.) Ky. Acts ch. 14, sec. 309, effective January 2, 1978. -- Created 1948 Ky. Acts ch. 5, sec. 2.