

224.80-190 Amendment or termination of environmental covenant -- Assignment of holder's rights.

- (1) (a) Except as provided in paragraph (b) of this subsection, an environmental covenant may be amended or terminated by consent only if the amendment or termination is requested as a modification to the corrective action plan approved by the cabinet, and only if the amendment or termination is signed by:
 1. The cabinet;
 2. The current owner of the fee simple of the real property subject to the covenant;
 3. Each person that originally signed the environmental covenant or that person's heirs, assigns, or transferees unless:
 - a. The person or the person's heirs, assigns, or transferees waived in a signed document the right to consent; or
 - b. A court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
 4. The holder, except as otherwise provided in subsection (4)(b) of this section.
- (b) The consent of a holder or of persons identified in paragraph (a)3. of this subsection shall not be required for an amendment that has the sole effect of removing or reducing a land use restriction in an environmental covenant, if the cabinet determines that the restriction is no longer necessary to protect human health or the environment as a result of corrective action performed under a plan approved by the cabinet, and the requirements of subsection (6) of this section have been satisfied.
- (2) If an interest in real property is subject to an environmental covenant, the interest shall not be affected by an amendment of the environmental covenant unless:
 - (a) The current owner of the interest consents to the amendment; or
 - (b) The current owner of the interest has waived in a signed record the right to consent to the amendments.
- (3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder shall be deemed an amendment of the environmental covenant.
- (4) Except as otherwise provided in an environmental covenant:
 - (a) A holder may not assign its interest without consent of the other parties to the environmental covenant specified in subsection (1) of this section; and
 - (b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section.
- (5) A court of competent jurisdiction may fill a vacancy in the position of the holder.
- (6) (a) When the cabinet determines that corrective action performed under a cabinet-approved plan has eliminated the environmental conditions necessitating a land use restriction in an environmental covenant, the cabinet shall issue a proposed determination authorizing the amendment of the covenant to remove

or reduce the restriction.

- (b) The cabinet shall provide written notice of the proposed determination and the proposed amended covenant to the holder and to all persons identified in subsection (1)(a)2. and 3. of this section. The notice shall advise recipients that any objection to the proposed amended covenant must be filed with the cabinet within thirty (30) days of receipt and must state in writing with reasonable specificity the legal or technical basis for maintaining the restriction.
- (c) If no objection is submitted within thirty (30) days, the cabinet shall issue a final determination approving the amendment, and the amendment shall be effective upon recordation.
- (d) If a timely objection is submitted, the cabinet shall consider the objection and issue a final written determination within forty-five (45) days of the receipt of the objection. The cabinet's final determination shall approve, modify, or deny the proposed amendment.
- (e) Once the cabinet's final determination has been made, the objector shall have thirty (30) days to seek judicial review of the final determination by filing an action in the Franklin Circuit Court. In the proceeding, the burden shall be on the objector to demonstrate that the removal or reduction of the restriction would adversely affect human health or the environment. If the objector is unsuccessful in the proceeding, the proposed amendment shall be effective upon recordation.
- (f) If no action for judicial review is filed within thirty (30) days of the cabinet's final determination, the right to challenge the proposed amendment shall be waived and the proposed amendment shall be effective upon recordation.

Effective: April 8, 2026

History: Amended 2026 Ky. Acts ch. 55, sec. 1, effective April 8, 2026. -- Created 2005 Ky. Acts ch. 92, sec. 10, effective June 20, 2005.

Legislative Research Commission Note (4/8/2026). 2026 Ky. Acts ch. 55, sec. 3, provides that the amendments to this statute and KRS 224.80-180 in that Act shall apply to all environmental covenants recorded pursuant to KRS 224.80-100 to 224.80-210, including those recorded prior to April 8, 2026.