

1 AN ACT relating to environmental covenants and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 224.80-190 is amended to read as follows:

4 (1) **(a) Except as provided in paragraph (b) of this subsection,** an environmental
5 covenant may be amended or terminated by consent only if the amendment or
6 termination is requested as a modification to the corrective action plan
7 approved by the cabinet, and only if the amendment or termination is signed
8 by:

9 ~~1.(a)~~ The cabinet;

10 ~~2.(b)~~ The current owner of the fee simple of the real property subject to
11 the covenant;

12 ~~3.(c)~~ Each person that originally signed the environmental covenant or
13 that person's heirs, assigns, or transferees unless:

14 ~~a.(1)~~ The person or the person's heirs, assigns, or transferees waived in a
15 signed document the right to consent; or

16 ~~b.(2)~~ A court finds that the person no longer exists or cannot be located
17 or identified with the exercise of reasonable diligence; and

18 ~~4.(d)~~ The holder, except as otherwise provided in subsection (4)(b) of
19 this section.

20 **(b) The consent of a holder or of persons identified in paragraph (a)3. of this**
21 **subsection shall not be required for an amendment that has the sole effect**
22 **of removing or reducing a land use restriction in an environmental**
23 **covenant, if the cabinet determines that the restriction is no longer**
24 **necessary to protect human health or the environment as a result of**
25 **corrective action performed under a plan approved by the cabinet, and the**
26 **requirements of subsection (6) of this section have been satisfied.**

27 (2) If an interest in real property is subject to an environmental covenant, the interest

1 shall not be affected by an amendment of the environmental covenant unless:

2 (a) The current owner of the interest consents to the amendment; or

3 (b) The current owner of the interest has waived in a signed record the right to
4 consent to the amendments.

5 (3) Except for an assignment undertaken pursuant to a governmental reorganization,
6 assignment of an environmental covenant to a new holder shall be deemed an
7 amendment of the environmental covenant.

8 (4) Except as otherwise provided in an environmental covenant:

9 (a) A holder may not assign its interest without consent of the other parties to the
10 environmental covenant specified in subsection (1) of this section; and

11 (b) A holder may be removed and replaced by agreement of the other parties
12 specified in subsection (1) of this section.

13 (5) A court of competent jurisdiction may fill a vacancy in the position of the holder.

14 **(6) (a) When the cabinet determines that corrective action performed under a**
15 **cabinet-approved plan has eliminated the environmental conditions**
16 **necessitating a land use restriction in an environmental covenant, the**
17 **cabinet shall issue a proposed determination authorizing the amendment of**
18 **the covenant to remove or reduce the restriction.**

19 **(b) The cabinet shall provide written notice of the proposed determination and**
20 **the proposed amended covenant to the holder and to all persons identified**
21 **in subsection (1)(a)2. and 3. of this section. The notice shall advise**
22 **recipients that any objection to the proposed amended covenant must be**
23 **filed with the cabinet within thirty (30) days of receipt and must state in**
24 **writing with reasonable specificity the legal or technical basis for**
25 **maintaining the restriction.**

26 **(c) If no objection is submitted within thirty (30) days, the cabinet shall issue a**
27 **final determination approving the amendment, and the amendment shall be**

1 effective upon recordation.

2 (d) If a timely objection is submitted, the cabinet shall consider the objection
 3 and issue a final written determination within forty-five (45) days of the
 4 receipt of the objection. The cabinet's final determination shall approve,
 5 modify, or deny the proposed amendment.

6 (e) Once the cabinet's final determination has been made, the objector shall
 7 have thirty (30) days to seek judicial review of the final determination by
 8 filing an action in the Franklin Circuit Court. In the proceeding, the
 9 burden shall be on the objector to demonstrate that the removal or
 10 reduction of the restriction would adversely affect human health or the
 11 environment. If the objector is unsuccessful in the proceeding, the proposed
 12 amendment shall be effective upon recordation.

13 (f) If no action for judicial review is filed within thirty (30) days of the
 14 cabinet's final determination, the right to challenge the proposed
 15 amendment shall be waived and the proposed amendment shall be effective
 16 upon recordation.

17 ➔Section 2. KRS 224.80-180 is amended to read as follows:

18 (1) An environmental covenant shall be perpetual, except under the following
 19 circumstances:

20 (a) By its terms, the environmental covenant is limited to a specific duration or is
 21 terminated by the occurrence of a specific event;

22 (b) The environmental covenant is terminated pursuant to KRS 224.80-190;

23 (c) The environmental covenant is terminated by foreclosure of an interest that
 24 has priority over the environmental covenant;~~[-or]~~

25 (d) The environmental covenant is terminated or modified in an eminent domain
 26 proceeding and the following conditions exist:

27 1. The cabinet is a party to the eminent domain proceeding;

- 1 2. All persons identified in KRS 224.80-190(1) and (2) are given notice of
2 the pendency of the eminent domain proceeding; and
- 3 3. A court of competent jurisdiction determines, after hearing, that the
4 termination or modification of the environmental covenant will not
5 adversely affect human health or the environment; or

6 *(e) The environmental covenant is amended to remove or reduce a land use*
7 *restriction pursuant to Section 1 of this Act, and further court approval is*
8 *not required.*

9 (2) If the cabinet or if any holder determines that the intended benefits of an
10 environmental covenant can no longer be realized, Franklin Circuit Court, under the
11 doctrine of changed circumstances, in an action in which all persons identified in
12 KRS 224.80-190(1) and (2) have been given notice, may terminate the
13 environmental covenant or reduce its burden on the real property subject to the
14 environmental covenant.

15 (3) Except as otherwise provided in subsections (1) and (2) of this section, an
16 environmental covenant may not be extinguished, limited, or impaired through the
17 issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of
18 adverse possession, prescription, abandonment, waiver, lack of enforcement,
19 acquiescence, or a similar doctrine.

20 ➔Section 3. The provisions of Sections 1 and 2 of this Act shall apply to all
21 environmental covenants recorded pursuant to KRS 224.80-100 to 224.80-210, including
22 those recorded prior to the effective date of this Act.

23 ➔Section 4. Whereas it is critical that an efficient procedure be established for the
24 timely removal of land use restrictions in environmental covenants that have been
25 deemed no longer necessary so that the affected land can be put to its highest and best use
26 as soon as possible, an emergency is declared to exist, and this Act takes effect upon its
27 passage and approval by the Governor or upon its otherwise becoming a law.