

350.280 Easements of necessity to abate certain dangerous violations and for appraisal purposes when access to property denied -- When effective -- Appraisal and calculation of damages -- Independent appraisal by property owner or legal occupant -- Payment of damages -- Payment of entry fee for appraisal purposes.

- (1) (a) As used in this section, "he or she" includes "person" as defined in KRS 350.010.
- (b) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation. The easement of necessity becomes effective, and the permittee or operator is authorized to enter the property to undertake immediate action to abate the violation if he or she concurrently:
 1. Provides to the property owner or legal occupant a copy of the cabinet's order and a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work;
 2. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
 3. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will diligently pursue abatement of the violation, and will obtain an appraisal completed by a real estate appraiser certified under KRS Chapter 324A of the damages to the property, including loss of use, that have resulted from the violation, that the appraisal will be completed and provided to the property owner or legal occupant within three (3) days of abatement of the violation by the operator or permittee, and that he or she will pay the property owner or legal occupant the amount of the damages in the permittee or operator's appraisal at that time.
- (c) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages:
 1. The permittee or operator shall have a certified appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within three (3) days of abatement of the violation by the operator or permittee;
 2. The property owner or legal occupant shall accept or reject this appraisal in writing within seven (7) days of receipt of the completed appraisal;
 3. If the property owner or legal occupant rejects this appraisal, he or

she may hire a real estate appraiser certified under KRS Chapter 324A to appraise the damages, including loss of use, that have resulted from the violation, and this such appraisal shall be completed and provided to the permittee or operator within thirty (30) days of receipt of the permittee's or operator's completed appraisal. Upon receipt of the invoice the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and

4. If the property owner or legal occupant accepts the permittee's or operator's appraisal, the permittee or operator shall promptly pay the property owner or legal occupant the amount of the damages reflected therein.
- (d) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee's or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee's or operator's appraisal damages, and if the property owner or legal occupant's appraisal damages are for more than the permittee's or operator's, the permittee or operator shall pay the difference to the circuit clerk, in the county in which the majority of the property lies, to be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment. If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.
 - (e) If the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages within the time specified in subparagraph 2. of paragraph (c) of this subsection, the appraisal and offer shall be deemed accepted.
 - (f) The appraiser shall calculate the damages to the property, including loss of use, that have resulted from the violation which the owner or the legal occupant shall be entitled to under this subsection as the difference between the fair market value of the property before the violation and after the abatement of the violation, plus the reasonable rental value of the property during the period of time between the effective date of the easement of necessity and the date of the abatement of the violation.
- (2) If a permittee or operator has been issued a notice or order directing abatement of a violation other than one described in subsection (1) of this section, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator, for the limited purpose of allowing a real estate appraiser certified under KRS Chapter 324A, chosen by the permittee or operator, to enter upon the property to which the owner or legal occupant has refused access in order for the appraiser to appraise the damages, including loss of use, that likely will result from the violation.
 - (3) (a) The easement for the limited purpose of allowing the appraisal under

subsection (2) of this section shall be recognized and take effect when the operator or permittee:

1. Provides to the property owner or legal occupant a copy of the cabinet's order;
 2. Provides to the property owner or legal occupant and cabinet a plan of remedial measures to abate the violation;
 3. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
 4. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will within seven (7) days of entry of the appraiser obtain an appraisal of the damages to the property including loss of use, that likely will result from the violation, and that upon completion of the appraisal he or she will provide the appraisal to the property owner or legal occupant and pay the property owner or legal occupant an entry fee. The entry fee shall be calculated as one-half (1/2) of the amount of the appraisal or the sum of five hundred dollars (\$500), whichever is greater, for the privilege to enter the property and conduct the appraisal.
- (b) Upon payment of the entry fee by the permittee or operator, an easement of necessity shall be recognized on behalf of the permittee or operator for the limited purposes of abating the violation and the operator or permittee shall be authorized to enter the property to undertake immediate action to abate the violation, provided that the landowner has been provided a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and the permittee or operator provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work.
- (c) Following the effective date of the easement of necessity to abate the violation, the procedures set forth in subsection (1)(c) to (f) of this section shall apply. The entry fee shall be deducted from any subsequent payment deemed due the property owner or legal occupant as a result of the post-abatement appraisal or appraisals. If the entry fee exceeds the amount of all appraisals, the property owner or legal occupant shall be entitled to retain the entry fee in its entirety.
- (4) Nothing contained in this section shall affect any person's right to bring a civil action for damages, including punitive and compensatory damages, or other appropriate relief.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 159, sec. 1, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 284, sec. 1, effective April 9, 2002. -- Created 2000 Ky. Acts ch. 267, sec. 1, effective July 14, 2000.

Legislative Research Commission Note (7/13/2004). Although Ky. Acts ch. 159, sec. 1(2), contains language concerning "real estate appraiser certified under KRS Chapter 324," it is clear from the context that citing to KRS Chapter 324, rather than to KRS Chapter 324A, was a manifest clerical or typographical error, and it has been corrected in codification under KRS 7.136(1)(h).