

224.80-120 Identification of holders under covenant -- Obligations of holders and of cabinet -- Priority of interests in real property existing at the time of creation of an environmental covenant -- Subordination agreements.

- (1) An environmental covenant may identify more than one (1) holder, and the interest of a holder is an interest in real property.
- (2) A right of the cabinet pursuant to KRS 224.80-100 to 224.80-210 or under an environmental covenant shall not be deemed an interest in real property. The obligations imposed on a property and holders of a property subject to an environmental covenant shall be considered as ongoing obligations in furtherance of protection of public health and the environment and are not intended to be obligations that are reducible to a monetary claim or dischargeable under bankruptcy law.
- (3) The following rules apply to persons with interests in real property in existence at the time an environmental covenant is created or modified:
 - (a) A person with an interest that has priority under other law shall not be affected by an environmental covenant, except when the owner of the interest is a party to the covenant or subordinates his or her interest to the environmental covenant in a subordination agreement.
 - (b) Nothing contained in KRS 224.80-100 to 224.80-210 shall require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by an environmental covenant.
 - (c) The cabinet shall have the authority to disapprove an environmental covenant if all prior interests to the real property are not subordinated to the environmental covenant.
 - (d) A subordination agreement may be contained in the environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.
 - (e) A person's act of subordinating his or her prior interest in a real property to an environmental covenant shall affect the priority of that person's interest. The act of subordinating a prior interest in a real property subject to an environmental covenant shall not be presumed to impose any affirmative obligation on the person with respect to the environmental covenant.

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