

**277.400 Entities eligible to file declaration of state railbanking -- Use of property subject to declaration -- Claims of aggrieved persons.**

- (1) Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a "Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.
- (2) Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.
- (3) After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:
  - (a) The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;
  - (b) All required federal and state permits and authority to reactivate and operate a

railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;

- (c) Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and
  - (d) The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.
- (4) Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.
- (5) Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 338, sec. 2, effective July 14, 2000.