

353.595 Notice to surface owner of intent to drill oil or gas well -- Compensation for damage to surface -- Restoration of surface.

- (1) As used in this section:
 - (a) "Person" means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or agency thereof.
 - (b) "Drilling operations" means the drilling, deepening, or conversion of a well for oil or gas production, core hole for oil or gas purposes, or drill hole for a stratigraphic test for oil or gas purposes.
 - (c) "Entry" means the moving upon the surface of land with equipment to commence drilling operations, but shall not include entry for the survey for or ascertaining or identification of a well location.
 - (d) "Operator" means the person, whether the owner or not, who applies for or holds a permit for drilling operations or who is named as the principal on a bond for a permit for a well that was issued by the department.
 - (e) "Surface owner" means the person in whose name the surface of the land on which drilling operations are contemplated, and who is assessed for purposes of taxes imposed according to the records of the property valuation administrator of the county where the land is located as certified by the property valuation administrator.
 - (f) "Production operation" means the operation of a well for the production of oil or gas, including all acts, structures, equipment, and roadways necessary for the operation.
 - (g) "New well" means a well that is spudded after July 13, 1990, and does not utilize any part of a well bore or drilling location that existed prior to July 13, 1990.
 - (h) "Completion of the well" means completion of those processes necessary before production occurs, including the laying of flow lines and the construction of the tank battery. If the well is not productive, the date of completion of the well shall be the day it is plugged and abandoned.
- (2) This section shall be applicable only for the drilling operations of new wells except as provided in subsection (7) of this section. This section shall not apply for reworking operations on a well. This section shall be applicable only when the surface owner has not consented in writing to the drilling operations and:
 - (a) There has been a complete severance of the ownership of the oil and gas from the ownership of the surface; or
 - (b) The surface owner owns an interest in the oil and gas.
- (3)
 - (a) Prior to commencement of the drilling of a well, the operator shall give written notice to the surface owner of the operator's intent to commence drilling operations.
 - (b) The operator shall, for the purpose of giving notice, secure from the property valuation administrator's office, within ninety (90) days prior to the giving of

the notice, a certification which shall identify the person in whose name the lands on which drilling operations are to be commenced and who is assessed at the time the certification is made. The written certification made by the property valuation administrator of the surface owner shall be conclusive evidence of the surface ownership.

- (c) The notice required to be given by the operator to the surface owner shall identify the following:
 - 1. The location of the proposed entry on the surface for drilling operations and the date on or after which drilling operations shall commence.
 - 2. A photocopy of the drilling application to the department for the well to be drilled.
 - 3. The name, address, and telephone number of the operator.
 - 4. An offer to discuss with the surface owner those matters set forth in subsection (4) of this section prior to commencement of drilling operations.
- (d) If the surface owner elects to meet the operator, the surface owner shall request the operator to schedule a meeting at a mutually agreed time and place within the limitations set forth herein. Failure of the surface owner to contact the operator at least five (5) days prior to the proposed commencement of drilling operations shall be conclusively deemed a waiver of the right to meet by the surface owner. The meeting shall be scheduled between the hours of nine o'clock in the morning and the setting of the sun of the same day and shall be at least three (3) days prior to commencement of drilling operations. Unless agreed to otherwise, the place shall be located within the county in which drilling operations are to be commenced where the operator or his agent shall be available to discuss with the surface owner or his agent those matters set forth in subsection (4) of this section.
- (e) The notice shall be given to the surface owner by either:
 - 1. Certified mail addressed to the surface owner at the address shown in the certification obtained from the property valuation administrator, which shall be postmarked at least ten (10) days prior to the commencement of drilling operations; or
 - 2. Personal delivery to the surface owner at least eight (8) days prior to the commencement of drilling operations.
- (f) Notice to the surface owner as defined in this section shall be deemed conclusive notice to the record owners of all interest in the surface.
- (4) The operator, or his agent shall, if the surface owner accepts the offer to discuss, be available at the time agreed, date, and place to discuss with the surface owner the following:
 - (a) Placement of roads to be constructed by the operator;
 - (b) Points of entry upon the surface for drilling operations;
 - (c) Construction and placement of pits used for drilling operations;

- (d) Restoration of fences to be cut in order to make entry upon the surface for drilling operations;
 - (e) Use of water on the surface of the lands;
 - (f) Removal of trees; and
 - (g) Surface water drainage changes caused by drilling operations.
- (5) The surface owner shall be entitled to reasonable compensation from the operator for damages to growing crops, trees, shrubs, fences, roads, structures, improvements, and livestock thereon caused by the drilling of a new well. The surface owner shall be entitled to reasonable compensation from the operator for subsequent damages to growing crops, trees, shrubs, fences, roads, structures, improvements, and livestock caused by subsequent production operations of the operator thereon. The surface owner shall be entitled to reasonable compensation for all negligent acts of the operator that cause measurable damage to the productive capacity of the soil. In addition, the operator shall not utilize any more of the surface estate than is reasonably necessary for the exploration, production and development of the mineral estate.
- (6) The compensation required pursuant to subsection (5) of this section shall be paid in any manner mutually agreed upon by the operator and the surface owner, but the failure to agree upon, or make the compensation required, shall not prevent the operator from commencement of drilling operations. The operator shall tender to the surface owner payment by check or draft in accordance with the provisions of this section no later than ninety (90) days after completion of the well. The surface owner's remedy shall be an action for compensation in the Circuit Court in which the lands, or the greater part thereof, are located on which drilling operations were conducted. If the operator fails to tender payment within the ninety (90) day period or if the tender is not reasonable, the surface owner shall be entitled to reasonable compensation as provided in this section, as well as attorney's fees. If the operator relies on a third-party appraiser's assessment of damages there shall be no award of attorney's fees.
- (7) In conjunction with the plugging and abandonment of any well or the reworking of any well, the operator shall restore the surface and any improvements thereon to a condition as near as practicable to their condition prior to commencement of the work. The surface owner and operator may waive this requirement in writing, subject to the approval of the department that the waiver is in accordance with its administrative regulations.
- (8) Nothing in this section shall be construed to diminish the rights of the operator or surface owner as they exist by established common law. Any compensation paid and accepted pursuant to the provisions of subsections (5) and (6) of this section shall be a complete bar to the assertion of any other remedy for such damages.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 128, sec. 1, effective July 13, 1990.