

UNIFORM ENVIRONMENTAL COVENANTS ACT *

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UNIFORM ENVIRONMENTAL COVENANTS ACT

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UNIFORM ENVIRONMENTAL COVENANTS ACT**

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UNIFORM ENVIRONMENTAL COVENANTS ACT

SECTION 1. TITLE. This [Act] may be cited as the Uniform Environmental Covenants Act.

SECTION 2. DEFINITIONS. In this [Act]:

(1) “Activity and use limitations” means restrictions or obligations created under this [Act] with respect to real property.

(2) “Agency” means the [insert name of state regulatory agency for environmental protection] or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) “Common interest community” means a condominium, cooperative or other real property with respect to which a person, by virtue of the person’s ownership of a parcel of real property, is obligated to pay for property taxes, insurance premiums, maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) “Environmental covenant” means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) “Environmental response project” means a plan or work performed for environmental remediation of real property and conducted:

(A) under a federal or state program governing environmental remediation of real property, including [insert references to state law governing environmental remediation];

(B) incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) under a state voluntary clean-up program authorized in [insert reference to state statute or regulation].

(6) “Holder” means the grantee of an environmental covenant as specified in Section 3(a).

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(8) “Record”, when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. NATURE OF RIGHTS; SUBORDINATION OF INTERESTS.

(a) Any person may be a holder, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government. An environmental covenant may identify multiple holders. The interest of a holder is an interest in real property.

(b) The rights of an agency under this [Act] or under an approved environmental covenant, other than as a holder, are not interests in real property.

(c) An agency is bound by the obligations it assumes in an environmental covenant, but an agency does not assume obligations merely by approving an environmental covenant. Any other person who signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under other law or administrative action except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) This [Act] does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record or, if the environmental covenant covers commonly owned property in a common interest community, in a record signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

SECTION 4. CONTENTS OF ENVIRONMENTAL COVENANT.

(a) An environmental covenant must:

(1) state that the instrument is an environmental covenant executed pursuant to [insert statutory reference to this [Act].]

(2) contain a legally sufficient description of the real property subject to the covenant;

(3) describe the activity and use limitations on the real property;

(4) identify every holder;

(5) be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(6) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) requirements for periodic reporting describing compliance with the covenant;

(3) rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) a brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) restriction or limitation on amendment or termination of the covenant in addition to those contained in Sections 9 and 10; and

(6) rights of the holder in addition to its right to enforce the covenant pursuant to Section 11.

(c) In addition to other conditions of its approval, the agency may condition approval of an environmental covenant on the signing of the covenant by those persons specified by the agency whose interests in the real property may be affected by the covenant.

SECTION 5. VALIDITY.

(a) An environmental covenant that complies with this [Act] runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to a person other than the original holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes an affirmative obligation on any person having an interest in the real property or on the holder;
- (6) the benefit or burden does not touch or concern real property;
- (7) there is no privity of estate or contract;
- (8) the holder dies, ceases to exist, resigns, or is replaced; or

(9) the owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates activity and use limitations designed to protect human health or the environment and that was agreed to before the effective date of this [Act] is not invalid or unenforceable by reason of any of the limitations on enforcement of interests described in subsection (b) or because it was identified as an easement, servitude, deed restriction, or other interest. This [Act] does not apply in any other respect to such an instrument.

(d) This [Act] does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

SECTION 6. RELATIONSHIP TO OTHER LAND-USE LAW. This [Act] does not authorize a use of real property that is otherwise prohibited by zoning or by law other than this [Act] regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this [Act].

SECTION 7. NOTICE.

(a) A copy of a signed environmental covenant shall be provided to:

- (1) all persons who signed the covenant;
- (2) all persons holding a recorded interest in the real property subject to the covenant;
- (3) all persons in possession of the real property subject to the covenant;

(4) each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) any other persons the agency requires.

(b) The copy shall be provided by the persons and in the manner required by the agency.

(c) The validity of the covenant is not affected by failure to provide a copy of the covenant as required under this section.

SECTION 8. RECORDING.

(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every [county] in which any portion of the real property subject to the covenant is located. For purposes of recording, a holder shall be treated as a grantee.

(b) Except as otherwise provided in Section 9(c), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. Recording of an environmental covenant pursuant to the law of this state provides the same constructive notice of the covenant as the recording of a deed provides of an interest in real property.

SECTION 9. DURATION; AMENDMENT BY COURT ACTION.

(a) An environmental covenant is perpetual unless:

(1) by its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) terminated by consent pursuant to Section 10;

(3) terminated pursuant to subsection (b);

(4) terminated by foreclosure of an interest which has priority over the environmental covenant; or

(5) terminated or modified in an eminent domain proceeding, and only if:

(A) the agency that signed the covenant is a party to the proceeding;

(B) all persons identified in Section 10(a) and (b) are given notice of the pendency of the proceeding; and

(C) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court may, under the doctrine of changed circumstances, in an action in which all persons identified in Section 10(a) and (b) have been given notice, terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to [insert reference to appropriate administrative procedure act].

(c) Except as otherwise provided in subsections(a) and (b), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, acquiescence, or any similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of [insert reference to state Marketable Title and Dormant Mineral Interests statutes].

SECTION 10. AMENDMENT OR TERMINATION BY CONSENT.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (1) the agency;
- (2) the current owner of the fee simple of the real property subject to the covenant, unless waived by the agency;
- (3) each person that originally signed the covenant, unless the person waived in a signed record the right to consent or unless a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
- (4) except as otherwise provided in subsection (d)(2), the holder.

(b) If an interest is subject to an environmental covenant, that interest is not affected by an amendment of the covenant unless the owner of that interest consents to the amendment or has waived in a signed record the right to consent to future amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in the covenant:

- (1) a holder may not assign its interest without consent of the other parties;
- (2) a holder may be removed and replaced by agreement of the other parties specified in subsection (a); and
- (3) a court of competent jurisdiction may fill a vacancy in the position of holder.

SECTION 11. ENFORCEMENT OF ENVIRONMENTAL COVENANT.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (1) a party to the covenant;
- (2) the agency or, if it is not the agency, the [insert name of state regulatory agency for environmental protection];
- (3) any other person to whom the covenant expressly grants power to enforce;
- (4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and
- (5) a municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This [Act] does not limit the regulatory authority of the agency or the [insert name of state regulatory agency for environmental protection] under law other than this [Act] with respect to an environmental response project.

(c) A person is not subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

[SECTION 12. REGISTRY; SUBSTITUTE NOTICE.]

(a) The [insert name of state regulatory agency for environmental protection, secretary of state, or other appropriate state officer or agency] shall [establish and maintain a] [maintain its currently existing] registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the [state regulatory agency

for environmental protection, secretary of state, or other appropriate state officer or agency] considers appropriate. The registry is a public record for purposes of [insert reference to State Freedom of Information Act].

(b) After an environmental covenant or an amendment or termination of a covenant is filed in the registry pursuant to subsection (a), a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice must contain:

(1) a legally sufficient description and any available street address of the real property;

(2) the name and address of the owner of the real property, the agency, and the holder if other than the agency;

(3) a statement that the covenant, amendment, or termination is available in a registry at the [insert name and address of state regulatory agency for environmental protection, secretary of state, or other appropriate state officer or agency], and disclosing the method of any electronic access; and

(4) a statement that the notice is notification of an environmental covenant executed pursuant to [insert statutory reference to this [Act]].

(c) A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of subsection (b):

“1. This notice is filed in the land records of the [political subdivision] of [insert name of jurisdiction in which the real property is located] pursuant to Section 12 of the Uniform Environmental Covenants Act, [insert statutory reference].

2. This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is [insert address of property] [not available].

4. The name and address of the owner of the real property on the date of this notice is [insert name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located].

5. The environmental covenant, amendment or termination was signed by [insert name and address of the agency].

6. The environmental covenant, amendment, or termination was filed in the registry on [insert date of filing].

7. The full text of the covenant, amendment, or termination and any other information required by the agency is on file and available for inspection and copying in the registry maintained for that purpose by the [insert name of state regulatory agency for environmental protection] at [insert address and room of building in which the registry is maintained]. [The covenant, amendment or termination may be found electronically at [insert web address for covenant].”]

SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101 of that Act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

SECTION 15. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.