CHAPTER 31

UNIFORM ENVIRONMENTAL COVENANTS ACT

§3001. Short title

This chapter may be known and cited as the Uniform Environmental Covenants Act. [PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2005, c. 370, §1 (NEW).]

1. Activity and use limitations. "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.
[PL 2005, c. 370, §1 (NEW).]

2. Agency. "Agency" means the department or any legal successor or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.
[PL 2005, c. 370, §1 (NEW).]

3. Common interest community. "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 property taxes or insurance premiums or for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.
[PL 2005, c. 370, §1 (NEW).]

4. Environmental covenant; covenant. "Environmental covenant" or "covenant" means a servitude arising under an environmental response project and documented in a recordable instrument that imposes activity and use limitations. "Environmental covenant" does not include a municipal ordinance, a voluntary or other remedial action plan or a condition added thereto or an administrative or judicial order, whether unilateral or by consent, that may impose activity or use limitations.
[PL 2005, c. 370, §1 (NEW).]

5. Environmental response project. "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, but not limited to, remediation under the laws governing uncontrolled hazardous substance sites, pursuant to chapter 13-B, or the voluntary response action program under Title 38, section 343-E; or [PL 2005, c. 370, §1 (NEW).]

B. Incident to closure of a solid, special or hazardous waste management unit if the closure is conducted with approval of the department under the laws governing hazardous waste, septage and solid waste management, pursuant to chapter 13. [PL 2005, c. 370, §1 (NEW).]

[PL 2005, c. 370, §1 (NEW).]

6. Holder. "Holder" means the grantee of an environmental covenant as specified in section 3003, subsection 1.
[PL 2005, c. 370, §1 (NEW).]

7. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality or any other legal or commercial entity.
[PL 2005, c. 370, §1 (NEW).]

8. Record. "Record," the 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.
[PL 2005, c. 370, §1 (NEW).]

9. State. "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.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3003. Nature of rights

1. Holder. Any person, including a person that owns an interest in the real property, the agency or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property. When the department is the agency determining or approving the environmental response project pursuant to which an environmental covenant is created, the department shall identify all holders of the environmental covenant and may identify the department as a holder, notwithstanding any other provision of law. Notwithstanding section 568, subsection 5-A and section 1364, subsection 7 or any other provision of law, the department may be a holder of an environmental covenant and approval of the board is not required.
[PL 2005, c. 370, §1 (NEW).]

2. Right of agency. A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.
[PL 2005, c. 370, §1 (NEW).]

3. Obligations. An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that 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 law other than this chapter except as provided in the covenant.
[PL 2005, c. 370, §1 (NEW).]

4. Priority of recorded interests. The priority of recorded interests is governed by other law, including law relating to the police powers of the State and public policies protecting health and the environment, and is unaffected by this Act, except as provided in section 3009, subsection 3 for tax liens.
[PL 2005, c. 370, §1 (NEW).]

5. Signature on 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 boards of the owners' association.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3004. Contents of environmental covenant

1. Required contents. An environmental covenant must:

A. State that the instrument is an environmental covenant executed pursuant to this chapter; [PL 2005, c. 370, §1 (NEW).]

B. Contain a legally sufficient description of the real property subject to the covenant; [PL 2005, c. 370, §1 (NEW).]

C. Describe the activity and use limitations on the real property; [PL 2005, c. 370, §1 (NEW).]

D. Identify every holder; [PL 2005, c. 370, §1 (NEW).]

E. 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, except that the agency may not waive signature by an owner of the fee simple who is the current occupant of the real estate, if any; and [PL 2005, c. 370, §1 (NEW).]

F. Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant. [PL 2005, c. 370, §1 (NEW).]

[PL 2005, c. 370, §1 (NEW).]

2. Permissible contents. In addition to the information required by subsection 1, an environmental covenant may contain other information, restrictions and requirements agreed to by the persons that signed it, including:

A. Any requirements for notice following transfer of a specified interest in the property subject to the covenant, or concerning proposed changes in use of, applications for building permits for or proposals for any site work affecting any contamination on the property subject to the covenant; [PL 2005, c. 370, §1 (NEW).]

B. Any requirements for periodic reporting describing compliance with the covenant; [PL 2005, c. 370, §1 (NEW).]

C. Any rights of access to the property granted in connection with implementation or enforcement of the covenant; [PL 2005, c. 370, §1 (NEW).]

D. A brief narrative description of any contamination and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination; [PL 2005, c. 370, §1 (NEW).]

E. Any limitation on amendment or termination of the covenant in addition to those contained in sections 3009 and 3010; and [PL 2005, c. 370, §1 (NEW).]

F. Any rights of the holder in addition to the holder's right to enforce the covenant pursuant to section 3011. [PL 2005, c. 370, §1 (NEW).]

[PL 2005, c. 370, §1 (NEW).]

3. Additional signatories. In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3005. Validity; effect on other instruments

1. Runs with land. An environmental covenant that complies with this chapter runs with the land.

[PL 2005, c. 370, §1 (NEW).]

2. Valid and enforceable. An environmental covenant that is otherwise effective is valid and enforceable even if:

A. It is not appurtenant to an interest in real property; [PL 2005, c. 370, §1 (NEW).]

B. It can be or has been assigned to a person other than the original holder; [PL 2005, c. 370, §1 (NEW).]

C. It is not of a character that has been recognized traditionally at common law; [PL 2005, c. 370, §1 (NEW).]

D. It imposes a negative burden; [PL 2005, c. 370, §1 (NEW).]

E. It imposes an affirmative obligation on a person having an interest in the real property or on the holder; [PL 2005, c. 370, §1 (NEW).]

F. The benefit or burden does not touch or concern real property; [PL 2005, c. 370, §1 (NEW).]

G. There is no privity of estate or contract; [PL 2005, c. 370, §1 (NEW).]

H. The holder dies, ceases to exist, resigns or is replaced; or [PL 2005, c. 370, §1 (NEW).]

I. The owner of an interest subject to the environmental covenant and the holder are the same person. [PL 2005, c. 370, §1 (NEW).]

[PL 2005, c. 370, §1 (NEW).]

3. Instrument recorded prior to effective date of chapter. An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection 2 or because it was identified as an easement, servitude, deed restriction or other interest. This chapter does not apply in any other respect to such an instrument.

[PL 2005, c. 370, §1 (NEW).]

4. Not invalidate or render unenforceable. This chapter does not invalidate or render unenforceable any interest, condition, declaration, covenant or environmental covenant, regardless of how designated, that is otherwise enforceable under the law of this State, whether created before or after the adoption of this chapter, including, without limitation, those adopted pursuant to section 343-E.

[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3006. Relationship to other land-use law

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter 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 that are authorized by zoning or by law other than this chapter. [PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3007. Notice

1. Provision of copy. A copy of an environmental covenant must be provided by the persons and in the manner required by the agency to:

A. Each person who signed the covenant; [PL 2005, c. 370, §1 (NEW).]

B. Each person holding a recorded interest in the real property subject to the covenant; [PL 2005, c. 370, §1 (NEW).]

C. Each person in possession of the real property subject to the covenant; [PL 2005, c. 370, §1 (NEW).]

D. Each municipality or other unit of local government in which real property subject to the covenant is located; and [PL 2005, c. 370, §1 (NEW).]

E. Any other person the agency requires. [PL 2005, c. 370, §1 (NEW).]
[PL 2005, c. 370, §1 (NEW).]

2. Effect of failure to provide copy. The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3008. Recording

1. Recording required. 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 indexing, a holder must be treated as a grantee.
[PL 2005, c. 370, §1 (NEW).]

2. Subject to laws governing recording priority. Except as otherwise provided in section 3009, subsection 3, an environmental covenant is subject to the laws of this State governing recording and priority of interests in real property.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3009. Duration; amendment by court action

1. Perpetual duration. An environmental covenant is perpetual unless it is:

A. By its terms limited to a specific duration or terminated by the occurrence of a specific event; [PL 2005, c. 370, §1 (NEW).]

B. Terminated by consent pursuant to section 3010; [PL 2005, c. 370, §1 (NEW).]

C. Terminated pursuant to subsection 2; [PL 2005, c. 370, §1 (NEW).]

D. Terminated by operation of other laws of this State governing priority of interests; or [PL 2005, c. 370, §1 (NEW).]

E. Terminated or modified in an eminent domain proceeding, but only if:

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

(2) All persons identified in section 3010, subsections 1 and 2 are given notice of the pendency of the proceeding; and

(3) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment. [PL 2005, c. 370, §1 (NEW).]
[PL 2005, c. 370, §1 (NEW).]

2. Intended benefits can no longer be realized. If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section

3010, subsections 1 and 2 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.
[PL 2005, c. 370, §1 (NEW).]

3. Extinguished, limited or impaired. Except as otherwise provided in subsections 1 and 2, an environmental covenant may not be extinguished, limited or impaired through issuance of a tax deed or foreclosure of a tax lien or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement or acquiescence or a similar doctrine.
[PL 2005, c. 370, §1 (NEW).]

4. Laws governing marketable title and dormant mineral interests. An environmental covenant may not be extinguished, limited or impaired by application of laws governing marketable title and dormant mineral interests.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3010. Amendment or termination by consent

1. Amendment or termination. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

A. The agency; [PL 2005, c. 370, §1 (NEW).]

B. Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant; [PL 2005, c. 370, §1 (NEW).]

C. Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and [PL 2005, c. 370, §1 (NEW).]

D. The holder, unless the holder waived in a signed record the right to consent or except as otherwise provided in subsection 4, paragraph B. [PL 2005, c. 370, §1 (NEW).]
[PL 2005, c. 370, §1 (NEW).]

2. Effect of amendment of covenant. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.
[PL 2005, c. 370, §1 (NEW).]

3. Assignment to new holder. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.
[PL 2005, c. 370, §1 (NEW).]

4. Assignment by holder; removal and replacement of holder. Except as otherwise provided in an environmental covenant:

A. A holder may not assign its interest without consent of the other parties; and [PL 2005, c. 370, §1 (NEW).]

B. A holder may be removed and replaced by agreement of the other parties specified in subsection 1. [PL 2005, c. 370, §1 (NEW).]
[PL 2005, c. 370, §1 (NEW).]

5. Vacancy filled by court. A court of competent jurisdiction may fill a vacancy in the position of holder.
[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3011. Enforcement of environmental covenant

1. Civil action. A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

A. A party to the covenant unless the agency determines otherwise for good cause at the time the environmental covenant is created, but in that event the party has no liability for any violation of the covenant by others; [PL 2005, c. 370, §1 (NEW).]

B. The agency or, if it is not the agency, the department; [PL 2005, c. 370, §1 (NEW).]

C. Any person to whom the covenant expressly grants power to enforce; [PL 2005, c. 370, §1 (NEW).]

D. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or [PL 2005, c. 370, §1 (NEW).]

E. A municipality or other unit of local government in which the real property subject to the covenant is located. [PL 2005, c. 370, §1 (NEW).]

[PL 2005, c. 370, §1 (NEW).]

2. Effect or regulatory authority. This chapter does not limit the regulatory authority of the agency or the department under any law other than this chapter with respect to an environmental response project.

[PL 2005, c. 370, §1 (NEW).]

3. Liability for environmental remediation. A person is not responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

[PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3012. Uniformity of application and construction

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

§3013. Relation to federal Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. but does not modify, limit or supersede Section 101 of that Act, 15 United States Code, Section 7001(a) or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 United States Code, Section 7003(b). [PL 2005, c. 370, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 370, §1 (NEW).

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