

AN ACT

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Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To enact the Uniform Environmental Covenants Act in the District of Columbia, to provide clear rules for a perpetual real estate interest, called an environmental covenant, in order to regulate the use of brownfields, including when real estate is transferred from one owner to another; and to amend the Brownfield Revitalization Amendment Act of 2000 to authorize the issuance and execution of environmental covenants.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Environmental Covenants Act of 2006".

TITLE I

Sec. 101. Definitions.

For the purposes of this title, the term:

- (1) "Activity and use limitations" means restrictions or obligations created under this act with respect to real property.
- (2) "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.
- (3) "Environmental agency" means the District of Columbia's Environment Health Administration, or its successor, or a federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.
- (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 District or federal program governing environmental remediation of real property, including a cleanup action plan under section 303 of the

Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code § 8-633.03);

(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 voluntary cleanup program under Title III of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-633.01 to 8-633.08).

(6) “Holder” means the grantee of an environmental covenant as specified in section 102(a).

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

(8) “Record” 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.

Sec. 102. Nature of rights; subordination of interests.

(a) Any person, including a person that owns an interest in the real property, the environmental 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.

(b) A right of an environmental agency under this act or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An environmental agency is bound by any obligation it assumes in an environmental covenant, but an environmental 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 act 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. 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.

(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.

(e) The Environmental Health Administration, or its successor, shall have regulatory authority over real property transfers from the federal government or a federal agency to a non-federal owner.

Sec. 103. Contents of environmental covenant.

(a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant 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 environmental agency, every holder, and, unless waived by the environmental 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) of this section, 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) Limitation on amendment or termination of the covenant in addition to those contained in sections 108 and 109; and

(6) Rights of the holder in addition to its right to enforce the covenant pursuant

to section 110.

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

Sec. 104. Validity; effect on other instruments.

(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 a 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 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 act is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section 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 the District of Columbia.

Sec. 105. Relationship to other land-use law.

This act does not authorize a use of real property that is otherwise prohibited by zoning, 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.

Sec. 106. Notice.

(a) A copy of an environmental covenant shall be provided by the persons designated by the agency and in the manner required by the environmental agency to:

- (1) Each person that signed the covenant;
 - (2) Each person holding a recorded interest in the real property subject to the covenant;
 - (3) Each person 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 person the environmental agency requires.
- (b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Sec. 107. Recording.

- (a) An environmental covenant and any amendment or termination of the covenant must be recorded with District of Columbia Recorder of Deeds. For purposes of indexing, a holder shall be treated as a grantee.
- (b) Except as otherwise provided in section 108(c), an environmental covenant is subject to the laws of the District governing recording and priority of interests in real property.

Sec. 108. Duration; amendment by court action.

- (a) An environmental covenant is perpetual unless it is:
- (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 109;
 - (3) Terminated pursuant to subsection (b) of this section;
 - (4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or
 - (5) Terminated or modified in an eminent domain proceeding, but only if:
 - (A) The environmental agency that signed the covenant is a party to the proceeding;
 - (B) All persons identified in section 109(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 environmental 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 109(a) and (b) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The environmental agency's determination or its failure to make a determination upon request is subject to review pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §

2-501 *et seq.*).

(c) Except as otherwise provided in subsections (a) and (b) of this section, 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, or acquiescence, or a similar doctrine.

Sec. 109. 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 environmental agency;
- (2) Unless waived by the environmental agency, the current owner of the fee simple of the real property subject to the covenant;
- (3) 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
- (4) Except as otherwise provided in subsection (d)(2) of this section, the holder.

(b) 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.

(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 an environmental 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) of this section; and
- (3) A court of competent jurisdiction may fill a vacancy in the position of holder.

Sec. 110. 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 Attorney General of the District of Columbia;
- (3) Any 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; or
- (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 environmental agency or the

Environmental Health Administration, or its successor, under law other than this act with respect to an environmental response project.

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

Sec. 111. Registry; substitute notice.

(a) The Environmental Health Administration shall establish and maintain a 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 Environmental Health Administration considers appropriate. The registry is a public record for purposes of section 742 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

(b) After an environmental covenant or an amendment or termination of a covenant is filed in the registry established pursuant to subsection (a) of this section, 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 subject to the covenant;

(2) The name and address of the owner of the fee simple interest in the real property, the environmental agency, and the holder if other than the environmental agency;

(3) A statement that the covenant, amendment, or termination is available in a registry at the Environmental Health Administration, which discloses the method of any electronic access; and

(4) A statement that the notice is notification of an environmental covenant executed pursuant 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) of this section:

“1. This notice is filed in the land records of the District of Columbia pursuant to, the Uniform Environmental Covenants Act of 2006, passed on 2nd reading on February 7, 2006 (Enrolled version of Bill 16-147).

“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 fee simple interest in 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 District of Columbia].

“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 environmental agency is on file and available for inspection and copying in the registry maintained for that purpose by the Environmental Health Administration 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].”

Sec. 112. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 19 68 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

Sec. 113. 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.

Sec. 114. 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, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101 of that act (15 U.S.C. § 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. § 7003(b)).

TITLE II

Sec. 201. Section 501 of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code § 8-635.01), is amended as follows:

Note,
§ 8-635.01

(a) Subsection (b) is amended as follows:

(1) Paragraph (3) is amended by striking the word “and” at the end.

(2) A new paragraph (3A) is added to read as follows:

“(3A) Environmental covenant signed by the EHA in accordance with the Uniform Environmental Covenants Act of 2006, passed on 2nd reading on February 7, 2006 (Enrolled version of Bill 16-147); and”.

(3) Paragraph (4) is amended by striking the word “Orders” and inserting the phrase “Other orders” in its place.

(b) Subsection (d) is amended to read as follows:

“(d) Any instruments issued pursuant to this section shall run with the land and may not be declared unenforceable under any circumstances, including lack of property interest, lack of privity of estate or contract, lack of benefit to a particular property, or any rule against restraints on transfer of property. EHA may execute, modify, or terminate environmental covenants entered into pursuant to this section in accordance with the Uniform Environmental Covenants Act of 2005. EHA may modify, rescind, or extinguish any other instrument issued pursuant to this section for good cause consistent with the objectives of this act; provided, that the public is notified and given the opportunity to comment on the proposed action.”.

TITLE III

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia