ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - UNIFORM ENVIRONMENTAL COVENANTS PROGRAM ADMINISTRATIVE CODE

CHAPTER 335-5-2 ENVIRONMENTAL COVENANTS

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335-5-2-.01 Covenant Contents.

(1) An environmental covenant is not effective unless it includes all of the following information:

(a) A statement that the instrument is an environmental covenant executed pursuant to the Act.

(b) A legally sufficient description of the real property subject to the covenant.

(c) A description of the activity and use limitations on the real property.

(d) Identification of every holder.

(e) The signatures of the Director, every holder, and unless waived by the Department in writing, every owner of the fee simple of the real property subject to the covenant.

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

(2) The covenant may also contain any other information, restrictions, and requirements, including but not limited to any of the following:

(a) Requirements for notice following the transfer of a specified interest in the property subject to the covenant.

(b) Requirements for notice 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.

(c) Requirements for periodic reports of compliance with the covenant.

(d) Rights of access to the property which are granted in connection with implementation or enforcement of the covenant.

(e) 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.

(f) An exculpatory provision that releases the grantor from future claims by the grantee or the grantee's successor in title that is consistent and enforceable under the laws of this State.

(g) Limitations on amendment or termination of the covenant in addition to those provided in 335-5-4-.02.

(h) Rights of the holder in addition to the holder's right to enforce the covenant pursuant to 335-5-5-.01.

(i) The name of the person who shall submit the environmental covenant to ADEM for listing in the registry required in 335-5-1-.05.

Author: James L. Bryant; Lawrence A. Norris, R. Blake Schmidt, Pamela W. Luckie
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335-5-2-.02 Covenant Rules.

(1) An environmental covenant that complies with the Act and 335-5 runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if one or more of the following conditions apply:

(a) It is not appurtenant to an interest in real property.

(b) It can be or has been assigned to a person other than the original holder.

(c) It is not of a character that has been recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder.

(f) The benefit or burden does not touch or concern real property.

(g) There is no privity of estate or contract.

(h) The holder dies, ceases to exist, resigns, or is replaced.

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

(3) An environmental covenant or an instrument that created restrictions or obligations with respect to real property and which was recorded before the effective date of 335-5 is not invalidated because it may not comply with all provisions of the Act or 335-5, or because it was identified as an easement, servitude, deed restriction, or other interest. 335-5 does not apply in any other respect to such an instrument.

(4) Neither the Act nor 335-5 invalidates or renders unenforceable any interest, whether designated as an environmental covenant or other interest, which is otherwise enforceable under the laws of this State.
Author: James L. Bryant; Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§35-19-5; 35-19-13.
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335-5-2-.03 Relations To Other Land Use Law.

Neither the Act nor 335-5 authorizes the use of real property which is otherwise prohibited by zoning, by other law which regulates the use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict a use of real property which is authorized by zoning or by law other than the Act.
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