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

CHAPTER 335-5-4
DURATION AND AMENDMENT

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335-5-4-.01 Duration Of Covenants.

(1) An environmental covenant is perpetual unless any of the following conditions apply:

(a) Its term is limited to a specific duration or terminated by the occurrence of a specific event.

(b) It is terminated or modified pursuant to 335-5-4-.01(2).

(c) It is terminated or modified by consent pursuant to 335-5-4-.02.

(d) It is terminated by foreclosure of an interest that has priority over the environmental covenant.

(e) It is terminated or modified in an eminent domain proceeding, but only if all of the following requirements are satisfied:

1. The Department is a party to the proceeding.

2. All persons identified in 335-5-4-.02(1) and (2) are given notice of the pendency of the proceeding.

3. The court determines, after hearing, that the termination or modification will not adversely affect human health, public welfare, or the environment.

(2) If the Department determines that the intended benefits of the covenant can no longer be realized, or are no longer protective of human health and the environment, it shall give notice of at least thirty (30) days to all persons identified in 335-5-4-.02(1) and (2), of its intention to petition a court, under the doctrine of changed circumstances, for termination of the covenant or reduction of its burden on the real property subject to the covenant. The Department's determination or its failure to make a

determination upon request is subject to review pursuant to the Alabama Administrative Procedures Act, Code of Ala. 1975, §§41-22-1 to 41-22-27 (AAPA). After the applicable provisions of AAPA have been satisfied, the Department may petition a court to terminate or reduce the covenant.

(3) Except as otherwise provided in 335-5-4-.01(1) and (2), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or by application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(4) An environmental covenant may not be extinguished, limited, or impaired by the application of any law relating to marketable title or dormant mineral interests.
Author: James L. Bryant; Lawrence A. Norris
Statutory Authority: Code of Ala. 1975, §§35-19-9; 35-19-13.
History: New Rule: Filed April 21, 2009; effective May 26, 2009.

335-5-4-.02 Amendment Of Covenants.

(1) Unless otherwise specified in the environmental covenant, no environmental covenant may be amended or terminated by consent unless the amendment or termination is signed by all of the following:

(a) The Department. Where the Department waives this requirement, the current owner of the fee simple of the real property subject to the covenant shall sign.

(b) Each person who originally signed the covenant, unless a person, in a signed record, waives the right to consent or a court finds that a person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

(c) Except as otherwise provided in 335-5-4-.02(4)(b), the holder.

(2) 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 waives, in a signed record, the right to consent to amendments.

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

(4) Except as otherwise provided in an environmental covenant:

(a) A holder may not assign its interest without consent of the other parties.

(b) A holder may be removed and replaced by agreement of the parties specified in 335-5-4-.02(1)(a) and (b).

(c) A court of competent jurisdiction may fill a vacancy in the position of holder.

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