

1 SENATE BILL 374

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; ENACTING THE UNIFORM ENVIRONMENTAL
12 COVENANTS ACT; PROVIDING FOR COVENANTS RESTRICTING USE OF REAL
13 PROPERTY SUBJECT TO ENVIRONMENTAL REMEDIATION.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
17 cited as the "Uniform Environmental Covenants Act".

18 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
19 Uniform Environmental Covenants Act:

20 A. "activity and use limitations" means
21 restrictions or obligations created pursuant to the Uniform
22 Environmental Covenants Act with respect to real property;

23 B. "agency" means the department of environment or
24 any other state or federal agency that determines or approves
25 the environmental response project pursuant to which the

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1 environmental covenant is created;

2 C. "common interest community" means a condominium,
3 cooperative or other real property with respect to which a
4 person, by virtue of the person's ownership of a parcel of real
5 property, is obligated to pay property taxes or insurance
6 premiums or for maintenance or improvement of other real
7 property described in a recorded environmental covenant that
8 creates the common interest community;

9 D. "environmental covenant" means a servitude
10 arising under an environmental response project that imposes
11 activity and use limitations;

12 E. "environmental response project" means a plan or
13 work performed for environmental remediation of real property
14 and conducted:

15 (1) under a federal or state program governing
16 environmental remediation of real property;

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

20 (3) under a state voluntary cleanup program
21 authorized in the Voluntary Remediation Act;

22 F. "holder" means the grantee of an environmental
23 covenant as specified in Subsection A of Section 3 of the
24 Uniform Environmental Covenants Act;

25 G. "person" means an individual; corporation;

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1 business trust; estate; trust; partnership; limited liability
2 company; association; joint venture; public corporation;
3 government; governmental subdivision, agency or
4 instrumentality; or any other legal or commercial entity;

5 H. "record", when used as a noun, means information
6 that is inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in perceivable
8 form; and

9 I. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States.

13 SECTION 3. [NEW MATERIAL] NATURE OF RIGHTS--SUBORDINATION
14 OF INTERESTS.--

15 A. Any person, including a person that owns an
16 interest in real property, an agency or a municipality or other
17 unit of local government, may be a holder. An environmental
18 covenant may identify more than one holder. The interest of a
19 holder is an interest in real property.

20 B. A right of an agency pursuant to the Uniform
21 Environmental Covenants Act or pursuant to an environmental
22 covenant, other than a right as a holder, is not an interest in
23 real property.

24 C. An agency is bound by any obligation it assumes
25 in an environmental covenant, but an agency does not assume

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1 obligations merely by signing an environmental covenant. Any
2 other person that signs an environmental covenant is bound by
3 the obligations the person assumes in the environmental
4 covenant, but signing the environmental covenant does not
5 change obligations, rights or protections granted or imposed
6 under law other than the Uniform Environmental Covenants Act,
7 except as provided in the environmental covenant.

8 D. The following rules apply to interests in real
9 property in existence at the time an environmental covenant is
10 created or amended:

11 (1) an interest that has priority under other
12 law is not affected by an environmental covenant unless the
13 person that owns the interest subordinates that interest to the
14 environmental covenant;

15 (2) the Uniform Environmental Covenants Act
16 does not require a person who owns a prior interest to
17 subordinate that interest to an environmental covenant or to
18 agree to be bound by the environmental covenant;

19 (3) a subordination agreement may be contained
20 in an environmental covenant covering real property or in a
21 separate record. If the environmental covenant covers commonly
22 owned property in a common interest community, the record may
23 be signed by any person authorized by the governing board of
24 the owners' association; and

25 (4) an agreement by a person to subordinate a

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1 prior interest to an environmental covenant affects the
2 priority of that person's interest but does not by itself
3 impose any affirmative obligation on the person with respect to
4 the environmental covenant.

5 SECTION 4. [NEW MATERIAL] CONTENTS OF ENVIRONMENTAL
6 COVENANT.--

7 A. An environmental covenant shall:

8 (1) state that the instrument is an
9 environmental covenant executed pursuant to the Uniform
10 Environmental Covenants Act;

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

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

15 (4) identify every holder;

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

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

22 B. In addition to the information required by
23 Subsection A of this section, an environmental covenant may
24 contain other information, restrictions and requirements agreed
25 to by the persons who signed it, including:

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

6 (2) requirements for periodic reporting that
7 describe compliance with the environmental covenant;

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

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

15 (5) limitation on amendment or termination of
16 the environmental covenant in addition to those contained in
17 Sections 9 and 10 of the Uniform Environmental Covenants Act;
18 and

19 (6) rights of the holder in addition to the
20 holder's right to enforce the environmental covenant pursuant
21 to Section 11 of the Uniform Environmental Covenants Act.

22 C. In addition to other conditions for the agency's
23 approval of an environmental covenant, the agency may require
24 those persons specified by the agency who have interests in the
25 real property to sign the environmental covenant.

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1 SECTION 5. ~~[NEW MATERIAL]~~ VALIDITY--EFFECT ON OTHER

2 INSTRUMENTS.--

3 A. An environmental covenant that complies with the
4 Uniform Environmental Covenants Act runs with the land.

5 B. An environmental covenant that is otherwise
6 effective is valid and enforceable even if:

7 (1) it is not appurtenant to an interest in
8 real property;

9 (2) it can be or has been assigned to a person
10 other than the original holder;

11 (3) it is not of a character that has been
12 recognized traditionally in common law;

13 (4) it imposes a negative burden;

14 (5) it imposes an affirmative obligation on a
15 person having an interest in the real property or on the
16 holder;

17 (6) the benefit or burden does not touch or
18 concern real property;

19 (7) there is no privity of estate or contract;

20 (8) the holder dies, ceases to exist, resigns
21 or is replaced; or

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

24 C. An instrument that creates restrictions or
25 obligations with respect to real property that would qualify as

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1 activity and use limitations, except for the fact that the
2 instrument was recorded before July 1, 2016, is not invalid or
3 unenforceable because of any of the limitations on enforcement
4 of interests described in Subsection B of this section or
5 because it was identified as an easement, servitude, deed
6 restriction or other interest. The Uniform Environmental
7 Covenants Act does not apply in any other respect to such an
8 instrument.

9 D. The Uniform Environmental Covenants Act does not
10 invalidate or render unenforceable any interest, whether
11 designated as an environmental covenant or other interest, that
12 is otherwise enforceable under the law of New Mexico.

13 SECTION 6. [NEW MATERIAL] RELATIONSHIP TO OTHER LAW.--

14 A. The Uniform Environmental Covenants Act does not
15 authorize a use of real property that is otherwise prohibited
16 by zoning, by a law other than the Uniform Environmental
17 Covenants Act regulating use of real property or by a recorded
18 instrument that has priority over the environmental covenant.
19 An environmental covenant may prohibit or restrict a use of
20 real property that is authorized by zoning or by a law other
21 than the Uniform Environmental Covenants Act.

22 B. The Uniform Environmental Covenants Act
23 supplements and does not displace the Voluntary Remediation
24 Act, the New Mexico Mining Act, the Surface Mining Act, the Oil
25 and Gas Act, the Water Quality Act or any other law governing

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1 an environmental response project.

2 C. An agency shall not approve a servitude or other
3 restriction on the use of ground water unless an environmental
4 response project has been approved and the agency has
5 determined that the environmental response project will achieve
6 compliance with ground water standards adopted or alternative
7 abatement standards approved pursuant to the Water Quality Act.
8 For the purposes of this subsection, "ground water" means water
9 below the land surface in a zone of saturation.

10 SECTION 7. [NEW MATERIAL] NOTICE.--

11 A. A copy of an environmental covenant shall be
12 provided by the persons and in the manner required by the
13 agency to:

14 (1) each person that signed the environmental
15 covenant;

16 (2) each person holding a recorded interest in
17 the real property subject to the environmental covenant;

18 (3) each person in possession of the real
19 property subject to the environmental covenant;

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

23 (5) any other person the agency requires.

24 B. The validity of an environmental covenant is not
25 affected by failure to provide a copy of the environmental

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1 covenant as required under this section.

2 SECTION 8. [NEW MATERIAL] RECORDING.--

3 A. An environmental covenant and any amendment,
4 assignment or termination of the environmental covenant shall
5 be recorded in every county in which any portion of the real
6 property subject to the environmental covenant is located. For
7 purposes of indexing, a holder shall be treated as a grantee.

8 B. Except as otherwise provided in Subsection C of
9 Section 9 of the Uniform Environmental Covenants Act, an
10 environmental covenant is subject to the laws of New Mexico
11 governing recording and priority of interests in real property.

12 SECTION 9. [NEW MATERIAL] DURATION--AMENDMENT BY COURT
13 ACTION.--

14 A. An environmental covenant is perpetual unless it
15 is:

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

18 (2) terminated by consent pursuant to Section
19 10 of the Uniform Environmental Covenants Act;

20 (3) terminated pursuant to Subsection B of
21 this section;

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

24 (5) terminated or modified in an eminent
25 domain proceeding, but only if:

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

3 (b) all persons identified in
4 Subsections A and B of Section 10 of the Uniform Environmental
5 Covenants Act are given notice of the pendency of the
6 proceeding; and

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

10 B. If the agency that signed an environmental
11 covenant has determined that the intended benefits of the
12 environmental covenant can no longer be realized, a court,
13 under the doctrine of changed circumstances, in an action in
14 which all persons identified in Subsections A and B of Section
15 10 of the Uniform Environmental Covenants Act have been given
16 notice, may terminate the environmental covenant or reduce its
17 burden on the real property subject to the environmental
18 covenant. The agency's determination or its failure to make a
19 determination upon request is subject to review pursuant to law
20 other than the Uniform Environmental Covenants Act.

21 C. Except as otherwise provided in Subsections A
22 and B of this section, an environmental covenant may not be
23 extinguished, limited or impaired through issuance of a tax
24 deed, foreclosure of a tax lien, application of the doctrine of
25 adverse possession, prescription, abandonment, waiver, lack of

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1 enforcement, acquiescence or a similar doctrine, or Section
2 45-2-901 NMSA 1978 or Sections 45-2-908 through 45-2-914 NMSA
3 1978.

4 SECTION 10. [NEW MATERIAL] AMENDMENT OR TERMINATION BY
5 CONSENT.--

6 A. An environmental covenant may be amended or
7 terminated by consent only if the amendment or termination is
8 signed by:

9 (1) the agency;

10 (2) the current owner of the fee simple of the
11 real property subject to the environmental covenant, unless
12 waived by the agency;

13 (3) each person that originally signed the
14 environmental covenant, unless the person waived in a signed
15 record the right to consent or a court finds that the person no
16 longer exists or cannot be located or identified with the
17 exercise of reasonable diligence; and

18 (4) the holder, except as otherwise provided
19 in Paragraph (2) of Subsection D of this section.

20 B. If an interest in real property is subject to an
21 environmental covenant, the interest is not affected by an
22 amendment of the environmental covenant unless the current
23 owner of the interest consents to the amendment or has waived
24 in a signed record the right to consent to amendments.

25 C. Except for an assignment undertaken pursuant to

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1 a governmental reorganization, an assignment of an
2 environmental covenant to a new holder is an amendment.

3 D. Except as otherwise provided in an environmental
4 covenant:

5 (1) a holder may not assign the holder's
6 interest without consent of the other parties;

7 (2) a holder may be removed and replaced by
8 agreement of the other parties specified in Subsection A of
9 this section; and

10 (3) a court of competent jurisdiction may fill
11 a vacancy in the position of holder.

12 SECTION 11. [NEW MATERIAL] ENFORCEMENT OF ENVIRONMENTAL
13 COVENANT.--

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

17 (1) a party to the environmental covenant;

18 (2) the agency or if it is not the agency, the
19 department of environment;

20 (3) any person to whom the environmental
21 covenant expressly grants power to enforce;

22 (4) a person whose interest in the real
23 property or whose collateral or liability may be affected by
24 the alleged violation of the environmental covenant; or

25 (5) a municipality or other unit of local

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1 government in which the real property subject to the
2 environmental covenant is located.

3 B. The Uniform Environmental Covenants Act does not
4 limit the regulatory authority of the agency or the department
5 of environment under law other than the Uniform Environmental
6 Covenants Act with respect to an environmental response
7 project.

8 C. A person is not responsible for or subject to
9 liability for environmental remediation solely because it has
10 the right to enforce an environmental covenant.

11 SECTION 12. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
12 CONSTRUCTION.--In applying and construing the Uniform
13 Environmental Covenants Act, consideration shall be given to
14 the need to promote uniformity of the law with respect to its
15 subject matter in states that enact it.

16 SECTION 13. [NEW MATERIAL] RELATION TO ELECTRONIC
17 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
18 Environmental Covenants Act modifies, limits or supersedes the
19 federal Electronic Signatures in Global and National Commerce
20 Act but does not modify, limit or supersede 15 USCA Section
21 7001(c) or authorize electronic delivery of any of the notices
22 described in 15 USCA Section 7003(b).

23 SECTION 14. [NEW MATERIAL] SAVING CLAUSE.--The Uniform
24 Environmental Covenants Act does not affect an action
25 commenced, a proceeding brought or a right accrued before July

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1 1, 2016.

2 SECTION 15. APPLICABILITY.--The provisions of the Uniform
3 Environmental Covenants Act apply to environmental covenants
4 arising on or after July 1, 2016. The provisions of the
5 Uniform Environmental Covenants Act shall not apply to lands
6 held in trust by the state pursuant to the act of congress of
7 June 20, 1910, entitled "An act to enable the people of New
8 Mexico to form a constitution and state government and be
9 admitted into the union on an equal footing with the original
10 states".

11 SECTION 16. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2016.

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