

Uniform Environmental Covenants Act:

Overcoming Common Law Conundrums with the Help of a Common Servitude

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Where Are We Now?

- “The law in this area is an unspeakable quagmire. The intrepid soul who ventures into this formidable wilderness never emerges unscarred. Some, the smarter ones, quickly turn back to take up something easier like the income taxation of trusts and estates. Others, having lost their way, plunge on and after weeks of effort emerge not far from where they began, clearly the worse for wear. On looking back they see the trail they thought they broke obscured with foul smelling waters and noxious weeds. Few willingly take up the challenge again.”
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- E. Rabin, Fundamentals of Modern Real Property Law 489 (1974).

What is An Environmental Covenant?

- It is a Servitude
 - “A legal device that creates a right or an obligation that runs with the land” –
Restatement of Servitudes (3d)
- Arising under an Environmental Response Project
 - environmental remediation of real property conducted under federal or state regulatory or voluntary cleanup
- Imposes Activity and Use Limitations

Contents of the Environmental Covenant

- **MUST** state that it is an environmental covenant
- **MUST** describe the real property affected
- **MUST** identify the “Holder” – be that owner or agency
- **MUST** be signed by the agency, all owners, and the holder, with the formalities for a deed
- **MUST** identify name and location for environmental response project reflected in the covenant
- **MAY** also contain such requirements as:
 - Notice to be given of site transfer, or of plans for use changes
 - Periodic reporting and compliance requirements
 - Brief description of the contamination and remedy
 - Additional rights of the Holder, or limits on covenant amendment

Environmental Covenants are Intended to be valid and perpetual despite:

- **Being something not traditionally recognized by common law**
 - Covenants imposing negative burdens
 - The “benefit” or “burden” does not touch the land
 - There is no privity of estate or contract
 - Passage of Time – Marketable Title Issues

Environmental Covenants grant a Holder an Interest in Real Estate

- **What if the Holder cannot or does not want such an interest?**
- **How does the Act deal with existing Interests in that same real estate – the importance of Subordination**