

5301.80 Environmental covenants - definitions.

As used in sections 5301.80 to [5301.92](#) of the Revised Code:

(A) "Activity and use limitations" means restrictions or obligations created under sections 5301.80 to [5301.92](#) of the Revised Code with respect to real property.

(B) "Agency" means the environmental protection agency or any other state or federal agency that determines or approves the environmental response project pursuant to which an environmental covenant is created.

(C) "Common interest community" means a condominium, a 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 to pay for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

(D) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meets the requirements established in section [5301.82](#) of the Revised Code.

(E) "Environmental response project" means a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property and conducted as follows:

(1) Under a federal or state program governing environmental remediation of real property that is subject to agency review or approval, including, but not limited to, property that is the subject of any of the following:

(a) A corrective action, closure, or post-closure pursuant to the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921 , et seq., as amended, or any regulation adopted under that act, or Chapter 3734. of the Revised Code or any rule adopted under it;

(b) A removal or remedial action pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 42 U.S.C.A. 9601 , et seq., as amended, or any regulation adopted under that act, or Chapter 3734. or 6111. of the Revised Code or any rule adopted under those chapters;

(c) A no further action letter submitted with a request for a covenant not to sue pursuant to section [3746.11](#) of the Revised Code;

(d) A no further action letter prepared pursuant to section [122.654](#) of the Revised Code;

(e) A corrective action pursuant to section [3737.88](#) , [3737.882](#) , or [3737.89](#) of the Revised Code or any rule adopted under those sections.

(2) Pursuant to a mitigation requirement associated with the section 401 water quality certification program or the isolated wetland program as required by Chapter 6111. of the Revised Code;

(3) Pursuant to a grant commitment or loan agreement entered into pursuant to section [6111.036](#) or [6111.037](#) of the Revised Code;

(4) Pursuant to a supplemental environmental project embodied in orders issued by the director of environmental protection pursuant to Chapter 6111. of the Revised Code.

(F) "Holder" means a grantee of an environmental covenant as specified in division (A) of section [5301.81](#) of the Revised Code.

(G) "Person" includes the state, a political subdivision, another state or local entity, the United States and any agency or instrumentality of it, and any legal entity defined as a person under section [1.59](#) of the Revised Code.

(H) "Record," when used as a noun, 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.

Effective Date: 12-30-2004

5301.81 Holder of environmental covenant.

(A) Any person, including a person that owns an interest in the real property that is the subject of an environmental covenant, may be a holder. An environmental covenant may identify more than one holder.

(B) The interest of a holder is an interest in real property. However, a right of an agency under sections [5301.80](#) to [5301.92](#) of the Revised Code or under an environmental covenant, other than a right as a holder, is not an interest in real property.

Effective Date: 12-30-2004

5301.82 Contents of environmental covenant - required signatures.

(A) An environmental covenant shall contain all of the following:

(1) A statement that the instrument is an environmental covenant executed pursuant to sections [5301.80](#) to [5301.92](#) of the Revised Code;

(2) A legally sufficient description of the real property that is subject to the environmental covenant;

(3) A description of the activity and use limitations on the real property;

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

(5) The name or identity of every holder;

(6) Rights of access to the property granted in connection with implementation or enforcement of the environmental covenant;

(7) The signatures of the applicable agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property that is subject to the environmental covenant;

(8) An identification of the name and location of any administrative record for the environmental response project pursuant to which the environmental covenant is created.

(B) In addition to the information required by division (A) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed the environmental covenant, including any of the following:

(1) Requirements for periodic reporting describing compliance with the environmental covenant;

(2) A brief narrative description of contamination on the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(3) Limitations on amendment or termination of the environmental covenant in addition to those established in sections [5301.89](#) and [5301.90](#) of the Revised Code;

(4) Rights of the holder in addition to the right to enforce the environmental covenant pursuant to section [5301.91](#) of the Revised Code.

(C) In addition to other conditions for an agency's approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property that is the subject of the environmental covenant to sign the covenant.

Effective Date: 12-30-2004

5301.83 Copies of environmental covenant to be provided.

(A) A copy of an environmental covenant shall be provided to all of the following in a manner required by the applicable agency:

- (1) Each person that signed the environmental covenant;
 - (2) Each person holding a recorded interest in the real property that is subject to the environmental covenant;
 - (3) Each person in possession of the real property that is subject to the environmental covenant;
 - (4) Each unit of local government in which the real property that is subject to the environmental covenant is located;
 - (5) Any other person that the agency requires.
- (B) The validity of an environmental covenant is not affected by failure to provide a copy of the environmental covenant as required under this section.

Effective Date: 12-30-2004

5301.84 Obligations under environmental covenant.

An agency is bound by any obligation that it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations that the person assumes in the environmental covenant, but signing the environmental covenant does not change obligations, rights, or protections that are granted or imposed under law other than sections [5301.80](#) to [5301.92](#) of the Revised Code, except as provided in the environmental covenant.

Effective Date: 12-30-2004

5301.85 Environmental covenant runs with land - enforceability.

- (A) An environmental covenant that complies with sections [5301.80](#) to [5301.92](#) of the Revised Code runs with the land.
- (B) An environmental covenant that is otherwise effective is valid and enforceable even if any of the following limitations on enforcement of interests applies:
- (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 of the environmental covenant 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.

(9) The owner of an interest that is 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 sections [5301.80](#) to [5301.92](#) of the Revised Code is not invalid or unenforceable because of any of the limitations on enforcement of interests described in division (B) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. Sections [5301.80](#) to [5301.92](#) of the Revised Code do not apply in any other respect to such an instrument.

(D) Sections [5301.80](#) to [5301.92](#) of the Revised Code do not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the laws of this state.

(E) Nothing in sections [5301.80](#) to [5301.92](#) of the Revised Code shall be construed to restrict, affect, or impair the rights of any person under the Revised Code or common law to enter into or record a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property that does not satisfy the requirements of division (A) of section [5301.82](#) of the Revised Code and does not have the permission, approval, or consent of an agency, political subdivision, regulatory body, or other unit of government. However, a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property entered into or recorded without such permission, approval, or consent is not an environmental covenant and is not binding on an agency, political subdivision, regulatory body, or other unit of government.

Effective Date: 12-30-2004

5301.86 Antecedent interests in real property - subordination agreement.

With respect to interests in real property in existence at the time that an environmental covenant is created or amended, all of the following apply:

(A) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest agrees to subordinate that interest to the environmental covenant.

(B) Sections [5301.80](#) to [5301.92](#) of the Revised Code do 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.

(C) A subordination agreement may be contained in an environmental covenant 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 who is authorized by the common interest community.

(D) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that persons's interest, but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Effective Date: 12-30-2004

5301.87 Zoning regulations and prior instruments.

Sections [5301.80](#) to [5301.92](#) of the Revised Code do not authorize a use of real property that is otherwise prohibited by zoning, by law other than sections [5301.80](#) to [5301.92](#) of the Revised Code regulating use of real property, or by a recorded instrument that has priority over an environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than sections [5301.80](#) to [5301.92](#) of the Revised Code.

Effective Date: 12-30-2004

5301.88 Filing and recording of environmental covenants.

(A) Except as otherwise provided in division (B) of this section, an environmental covenant and any amendment or termination of the environmental covenant shall be filed in the office of the county recorder of each county in which the real property that is subject to the environmental covenant is located and shall be recorded in the same manner as a deed to the property. For purposes of indexing, a holder shall be treated as a grantee.

(B) Pursuant to Chapter 5309. of the Revised Code, an environmental covenant and any amendment or termination of the environmental covenant in connection with registered land, as defined in section [5309.01](#) of the Revised Code, shall be entered as a memorial on the page of the register where the title of the owner is registered.

(C) Except as otherwise provided in division (C) of section [5301.89](#) of the Revised Code, an environmental covenant is subject to the laws of this state governing recording and priority of interest in real property.

Effective Date: 12-30-2004

5301.89 Environmental covenant perpetual - exceptions - judicial termination - limitation.

(A) An environmental covenant is perpetual unless any of the following applies:

(1) The environmental covenant is limited by its terms to a specific duration or is terminated by its terms by the occurrence of a specific event.

(2) The environmental covenant is terminated by consent pursuant to section [5301.90](#) of the Revised Code.

(3) The environmental covenant is terminated pursuant to division (B) of this section.

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

(5) The environmental covenant is terminated or modified in an eminent domain proceeding, but only if all of the following apply:

(a) The agency that signed the environmental covenant is a party to the proceeding.

(b) All persons identified in divisions (A) and (B) of section [5301.90](#) of the Revised code are given notice of the pendency of the proceeding.

(c) The court determines, after a hearing, that the termination or modification will not adversely affect human health or safety or the environment.

(B) If the agency that signed an environmental covenant has determined that the intended benefits of the environmental covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in divisions (A) and (B) of section [5301.90](#) of the Revised Code have been given notice, may terminate the environmental covenant or reduce its burden on the real property that is subject to the environmental covenant.

(C) Except as otherwise provided in divisions (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.

(D) An environmental covenant may not be extinguished, limited, or impaired by application of sections [5301.47](#) to [5301.56](#) of the Revised Code.

Effective Date: 12-30-2004

5301.90 Amendment or termination of environmental covenant by consent - assignment.

(A) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by all of the following:

(1) The applicable agency;

(2) Unless waived by that agency, the current owner of the fee simple of the real property that is subject to the environmental covenant;

(3) Each person that originally signed the environmental 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;

(4) Except as otherwise provided in division (D)(2) of this section, each holder.

(B) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the environmental covenant unless the current owner of the interest consents in writing 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 of the environmental covenant.

(D) Except as otherwise provided in an environmental covenant, both of the following apply:

(1) A holder may not assign its interest without consent of the other parties to the environmental covenant specified in division (A) of this section.

(2) A holder may be removed and replaced by agreement of the other parties specified in division (A) of this section.

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

Effective Date: 12-30-2004

5301.91 Civil action for violation - regulatory authority - liability.

(A) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by any of the following:

(1) A party to the environmental covenant specified in division (A) of section 5301.90 of the Revised Code that is not otherwise specified in divisions (A)(2) to (6) of this section;

(2) The environmental protection agency;

(3) The applicable agency if it is other than the environmental protection agency;

(4) Any person to whom the environmental covenant expressly grants the authority to maintain such an action;

(5) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the environmental covenant;

(6) A unit of local government in which the real property that is subject to the environmental covenant is located.

(B) Sections [5301.80](#) to [5301.92](#) of the Revised Code do not limit the regulatory authority of the applicable agency or the environmental protection agency if it is not the applicable agency under any law other than sections [5301.80](#) to [5301.92](#) of the Revised Code 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.

Effective Date: 12-30-2004

5301.92 Preemption of federal electronic signatures statute.

Sections [5301.80](#) to 5301.92 of the Revised Code modify, limit, or supersede the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464 (2000), 15 U.S.C. 7001 et seq., as amended, except that sections [5301.80](#) to 5301.92 of the Revised Code do not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a) , as amended, or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b) , as amended.

Effective Date: 12-30-2004