



# Facts About...

## Maryland's Uniform Environmental Covenants Act

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A new state statute that enforces restrictions on the use of environmentally remediated real estate – or Brownfields – is now the law in Maryland. Governor Robert Ehrlich signed the Uniform Environmental Covenants Act (UECA) – HB 679 – into law on April 26. The bill takes effect on October 1, 2005.

Maryland is the fifth state to adopt this important state law. UECA, which was drafted and approved by the National Conference of Commissioners on Uniform State Laws, has also been introduced in 11 additional state legislatures so far this year: Connecticut, the District of Columbia, Hawaii, Iowa, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Vermont and West Virginia.

UECA establishes requirements for a new valid real estate document – an “environmental covenant” – to control the future use of Brownfields when real estate is transferred from one person to another. Of course, the environmental covenant makes land more marketable because future owners know the situation.

Potential buyers are provided with a legal document that better explains the types of activities allowed at a site, and it provides greater assurance to sellers that the restrictions will be followed.

### **What is an Environmental Covenant?**

An environmental covenant is a legal device that restricts activities on sites where some contamination remains in place. While the general goal of most cleanups is to return a site to a condition where it can be safely used for *any* purpose, this is not always technically possible or economically practicable. Then, use restrictions and institutional controls may be imposed on the real estate to supplement cleanup measures. Restrictions limit use to *safe* use. These restrictions are necessary to protect human health and the environment from the potential of inadvertent exposures to residual contamination while encouraging economic development.

### **How will Maryland's UECA Law Affect Me?**

UECA requires that the environmental covenant contain a legal description of the property subject to the covenant. It also must describe the activity and use restrictions for the property, as well as the holder(s) of the covenants. The environmental covenants created under UECA are based upon traditional property law principles and are recorded in the local land records. This binds successive owners of the property. State and local governments have clear rights to enforce the land use restrictions and can ensure with greater certainty the protection of human health and the environment throughout the life of the land use restriction and through real estate transactions or legal actions.

### **Who is a “Holder”?**

UECA defines a “holder” as a grantee of an environmental covenant. A holder of an environmental covenant can include the Maryland Department of the Environment (MDE) or any state or federal agency that determines or approves the environmental response project for which the environmental covenant is created. It can also include any person. By law, this includes individuals, companies, or other legal entities.

### **Are There Any Required Notices?**

UECA establishes notice requirements for environmental covenants. It also requires that a covenant and any amendment or termination of the covenant be recorded in any county in which the property is located.

The law also requires that the Maryland Department of the Environment create and maintain a registry of all environmental covenants and any amendment or termination. Once a covenant, amendment or termination is



filed in the registry, a notice that meets specified requirements may be recorded in the land records instead of recording the entire environmental covenant.

### **What is in an Environmental Covenant?**

Under UECA, environmental covenants must include specific information. This information includes:

- Identifying that environmental covenant executed pursuant to UECA;
- Providing both a legal description of the real property as well as the activity and use limitations on the real property;
- Identifying every holder of the covenant as well as the name and location of any administrative record for the environmental response project reflected in the environmental covenant; and
- Ensuring that the environmental covenant is signed by the governmental entity(ies) responsible for approving an environmental response as well as every owner of the fee simple of the real property.

The environmental covenant can also include other information, restrictions, and requirements agreed to by the persons who signed it. This information can include:

- Proposed changes of use of, applications for building permits or proposals for any site work affecting the contamination on the property subject to the covenant;
- Requirements for periodic reporting describing compliance with the covenant;
- Rights of access to the property granted in connection with implementation or enforcement of the covenant;
- Brief narrative descriptions 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;
- Limitations on amendment or termination of the covenant; and
- Rights of the holder in addition to the holder's right to enforce the covenant.

### **Will an Environmental Covenant Ever Terminate?**

An environmental covenant is perpetual, except under certain conditions. Under specified conditions, a covenant may be amended or terminated by consent. One example of an amendment is if an assignment of an environmental covenant is to a new holder. In addition, courts can fill a vacancy in the position of a holder under specific conditions.

### **Why is UECA Important?**

UECA provides a clear mechanism for Maryland to create, enforce, modify and terminate environmental covenants to control the use of contaminated real estate and permit safe re-use of that property. This new law provides yet another tool to help with Brownfield redevelopment. It makes it possible for owners to transfer property knowing that the property restrictions will be respected.