



Chapter 15

Uniform Environmental Covenants Act and Deed Restrictions: History, Mechanics and Practical Applications of Primary Requirements in the Transfer and Use of Real Property

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This chapter provides a discussion of the basic provisions of the Uniform Environmental Covenants Act (UECA), its potential impact on real property transactions in the oil and natural gas industry, and the status of continued adoption across the United States. Coupled with statutory deed restrictions, the Uniform Environmental Covenants Act may help convert the “No Man’s Land” of Brownfields or similarly afflicted real property into a company asset again, valuable for transfer with less exposure to future liability for use. This chapter is intended as a general discussion of awareness and use in real property ownership, marketing and purchase and sale transactions in the industry (*i. e.*, disclosures, negotiations, transfers and minimization of long-term liability).

§ 15.01. Introduction.

For more than 400 years,¹ common law has recognized use of private land use controls known as servitudes. These servitudes, such as easements and restrictive covenants, have played a significant role in shaping land use controls during the last several centuries. However, as law and technology have advanced, so have the number of exceptions and other problems associated with private land use controls. What has resulted has become a quagmire of various and unpredictable federal and state laws on the enforceability of servitudes associated with real property, which can lead to long and costly legal battles to ascertain the legal rights associated with the property.

Simultaneously, advances in technology and industrialization have also come with undesirable consequences. Years of unchecked manufacturing and industrial uses on real property contributed to soil contamination,

¹ John L. Fisher, “The Evolution of Restrictive Covenants in West Virginia,” 100 *W. Va. L. Rev.* 55, 57 (Fall 1997).

thereby making many prime real estate choices unsuitable for any activity out of fear of causing spread of contamination. Furthermore, what began as laws designed to remedy the years of contamination also had unanticipated consequences of chilling economic development on these properties, out of fear of legal liability for the contamination or cleanup, even when the purchaser did not directly contribute to the contamination.

These issues created the need for an amicable resolution: to permit cleanup to proceed at a reasonable cost, yet allow the property to return to economic viability without fear of incurring future legal liability for continued contamination or cleanup costs. However, the law had no such tool to reach this compromise. What has been created is a set of environmental covenants that are designed to restrict certain uses of property after completion of a risk-based cleanup of the contaminated property, and to create stability and certainty by abrogating many of the common law requirements and defenses typically associated with restrictive covenants. In addition, the statutes and regulations within the states have created mechanisms which provide some “safe harbor” protection in land rights transfers. This chapter discusses (1) the common law restrictive covenant and its limitations, and what the new Uniform Environmental Covenants Act has done to remedy those issues; (2) state treatment with respect to the same, all in an effort to create legal predictability in creating and enforcing such covenants; and (3) to place otherwise undesirable real property back into the stream of commerce with a measure of protection for those who transfer, acquire and/or utilize such property.

§ 15.02. Common Law Restrictive Covenants.

A restrictive covenant is a type of servitude that is incidental to real property. Generally, a covenant is a private agreement between two or more parties to do, or to refrain from doing, certain things with respect to real property. In general, its purpose is to maintain or enhance the value of lands adjacent to one another by controlling their nature and use.² Restrictive

² See *Black's Law Dictionary* (West Group 7th ed. 1999).