

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 278

An Act to amend and reenact § 10.1-1241 of the Code of Virginia, relating to the Virginia Uniform Environmental Covenants Act.

[S 123]

Approved March 20, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1241 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-1241. Effect on other instruments; validity.

A. An environmental covenant that complies with this chapter runs with the land.

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

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 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; or

9. The owner of an interest 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 this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection B or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

D. This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of the Commonwealth.

E. An environmental covenant pursuant to this chapter may be utilized only when agreed to by the agencies, owners, and holders to such covenant. When restrictions and obligations are imposed on real property in connection with an environmental response project, they may be drafted and recorded in any manner permissible under the laws of Virginia. This chapter applies only to activity and use limitations drafted and recorded in accordance with the provisions of this chapter.