

57-25-109 Duration -- Amendment by court action.

- (1) An environmental covenant is perpetual unless it is:
 - (a)
 - (i) limited to a specific duration by its terms; or
 - (ii) terminated by the occurrence of a specific event;
 - (b) terminated by consent under Section 57-25-110;
 - (c) terminated under Subsection (2);
 - (d) terminated by foreclosure of an interest that has priority over the environmental covenant; or
 - (e) terminated or modified in an eminent domain proceeding, but only if:
 - (i) the agency that signed the covenant is a party to the proceeding;
 - (ii) all persons identified in Subsections 57-25-110(1) and (2) are given notice of the pendency of the proceeding; and
 - (iii) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.
- (2)
 - (a) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in Subsections 57-25-110(1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.
 - (b) The Department of Environmental Quality's determination under Subsection (2)(a) or its failure to make a determination upon request is subject to review under Title 63G, Chapter 4, Administrative Procedures Act.
 - (c) A federal agency's determination under Subsection (2)(a) or its failure to make a determination upon request is subject to review under applicable federal law.
- (3) Except as otherwise provided in Subsections (1) and (2), 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.
- (4) An environmental covenant may not be extinguished, limited, or impaired by application of Title 57, Chapter 9, Marketable Record Title.

Amended by Chapter 382, 2008 General Session