

455I.9 Duration amendment by court or department action.

1. An environmental covenant is perpetual unless any of the following occurs:

- a.* The environmental covenant, by its terms, is limited to a specific duration or terminated by the occurrence of a specific event.
- b.* The environmental covenant is terminated by consent pursuant to section 455I.10.
- c.* The environmental covenant is terminated pursuant to subsection 2 or 3.
- d.* The environmental covenant is terminated by foreclosure of an interest that has priority over the environmental covenant.
- e.* The environmental covenant is terminated or modified in an eminent domain proceeding, but only if all of the following occur:

(1) The agency that signed the document, if any, is a party to the proceeding.

(2) Each person that 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, and the current property owner are given notice of the pendency of the proceeding.

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

2. If the agency that signed an environmental covenant is a state agency and has determined that the intended purposes can no longer be realized, the agency may terminate the environmental covenant or reduce its burden on the real property subject to the environmental covenant. Notice shall be provided to each person that signed the covenant or their assignee, to the current property owner, and to any other persons identified in section 455I.10, subsection 1. The agency's determination or failure to make a determination upon request shall constitute final agency action. Failure by the agency to make a determination within sixty days upon request shall constitute final agency action. Any person entitled to notice by the agency shall be entitled to judicial review pursuant to section 17A.19 with the following exceptions:

a. Proceedings for judicial review shall be filed in the county in which the environmental covenant was recorded.

b. Notwithstanding section 17A.19, subsection 2, service of process shall not be jurisdictional and shall be as provided in the Iowa rules of civil procedure.

c. Notwithstanding section 17A.19, subsection 3, a petition for judicial review shall be filed within thirty days of the written decision by the agency. Such filing shall be jurisdictional.

d. The district court shall hear and consider relevant evidence, including testimony or other evidence not considered by the agency, regarding the question of whether the environmental covenant should be terminated or the burden on the real estate reduced if, based on changed circumstances, the court determines the intended purposes of the environmental covenant can no longer be realized.

3. If the agency that signed an environmental covenant is a federal agency, the agency's determination or failure to make a determination as provided in subsection 2 shall be reviewable in accordance with applicable federal law.

4. Except as otherwise provided in subsections 1, 2, and 3, 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.

5. An environmental covenant may not be extinguished, limited, or impaired by application of section 558.68 or sections 614.24 through 614.38.

2005 Acts, ch 102, §13