



Process to Extinguish a Deed Restriction

Purpose: The purpose of this guidance is to provide the process for extinguishing (i.e., updating or satisfying) deed restrictions.

This guidance is for use by agency staff, environmental consultants, responsible parties and property owners. The guidance includes a deed notice template and an example written determination. The process outlined in this guidance is consistent with Wis. Admin. § NR 727.09 (3), and the deed notice template is consistent with Wis. Admin. § NR 727.09 (6).

Note: For Department of Natural Resources (DNR) staff, to record a (deed) notice of contamination under Wis. Admin. § NR 728.11, follow [RR-5408](#) (document only available to DNR employees).

Current Use of Deed Notices

Deed notices are currently used to update the land record when a deed restriction exists for continuing obligations on a property. A property owner may want to have the deed restriction on a property record updated for a variety of reasons, including to:

- provide easier access to the requirements placed on a property,
- update requirements after additional action was taken,
- show changes to property boundaries, or
- update information once the conditions (continuing obligations) included in a deed restriction have been satisfied (i.e., no longer applicable or needed, due to subsequent actions).

Process to Extinguish a Deed Restriction

This section defines the process used to extinguish (i.e., satisfy or update) a deed restriction. Regardless of the change requested, the deed restriction is not removed or modified. It remains in the property record and is updated in the property record by the deed notice.

A request may be made to the DNR to update the information in the land use record (county Registry of Deeds office) and in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web. These post-closure actions may be taken under the authority provided in Wis. Stat. § 292 and Wis. Admin. § NR 727. Requests to update a deed restriction are typically submitted as part of a post closure modification request. [DNR Form 4400-237](#) is used to request a post-closure modification. The decision to extinguish a deed restriction is site specific. (<http://dnr.wi.gov/files/PDF/forms/4400/4400-237.pdf>)

The general process to extinguish the deed restriction is by recording a deed notice. The deed notice will reference a written determination, prepared by DNR, which includes a description of relevant actions taken in regard to the conditions in the deed restriction, and may reference an addendum to the closure letter. DNR uses an addendum to the closure letter to define new or satisfied continuing obligations, or to clarify any changes to the existing continuing obligations.

General Process

1. The applicant, typically the property owner, submits a post-closure modification request with fees, using [DNR Form 4400-237](#), for actions proposed at a site closed with residual contamination and continuing obligations. The fees are listed in the form and in the [Fee Schedule \(RR-966\)](#) (<http://dnr.wi.gov/files/PDF/pubs/rr/RR966.pdf>).
2. The DNR reviews the request and provides either an approval to proceed, or requests additional information or actions.
3. The applicant provides the additional information and/or conducts the approved actions, then provides documentation of the actions taken.
4. Upon receipt of documentation, DNR Legal Services staff, working with the RR project manager, prepare a written determination which summarizes actions taken to meet the continuing obligation, or of other changed conditions. If a closure letter addendum is provided as the final response to the post-closure modification request, it is referenced in the written determination, and included as an attachment. The regional team supervisor signs the written determination. This written determination is then provided to the applicant.
5. The applicant is responsible for drafting the deed notice. Consultants typically help with drafting the deed notice. The written determination is referenced in the deed notice, and included as an attachment. Deed notice format and other requirements are found in Wis. Admin. § NR 727.09 (6). See Appendix 1 for the correct format to use in preparing a deed notice for satisfaction of conditions in a deed restriction. As part of the requested review, DNR may review the draft deed notice to help ensure the correct facts are stated.
6. Upon completion of the deed notice, the property owner is responsible for signing and recording the deed notice at the county Register of Deeds office. A copy of the signed, notarized and recorded deed notice is then submitted to DNR. Deed notices are required to be recorded within 90 days after the agency (DNR or Department of Agriculture, Trade and Consumer Protection) specifies that a deed notice is required (Wis. Admin. § NR 727.09 (6) (d)). Copies of the recorded deed notice with the written determination, and the closure letter addendum will be included in the tracking system, BRRTS on the Web, attached to the action code for each document type.

Note: Some applicants have also requested that the DNR “replace” the deed restriction with a closure letter addendum. If the request is for ‘replacement’ of the deed restriction with a closure letter or closure letter addendum with no changes to the continuing obligations themselves, then only steps 1, 4, 5, and 6 in the general process described above apply. As with any other requests, the deed restriction remains in the property record, but is updated by the deed notice.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

Appendix

Appendix 1: Deed Notice Template and Draft Notice for Satisfaction of a Deed Restriction

Appendix 2: Example of a Written Determination

Document Number

DEED NOTICE

Recording Area

Name and Return Address

In Re: [Legal description of the property as it appears on the most recent deed]

STATE OF WISCONSIN)
) ss
COUNTY OF _____) [County where document is signed]

Parcel Identification Number (PIN)

_____, being first duly sworn, on oath deposes and says:

1. That he/she is the owner of the above-described property. OR [That he/she is an officer in the corporation that owns the property, a partner in the partnership that owns the property, or is an employee of the governmental entity that owns the property and has been authorized by the governing body to sign and record this notice]
2. That approval has been given by the Wisconsin Department of Natural Resources to **[terminate or amend]** previously recorded land use restrictions for the above-described property, as documented in the attached letter from the Department, labeled Exhibit A.
3. That this affidavit is being recorded for the purpose of notifying prospective purchasers and other interested persons that **[there are no further restrictions on the use of the above-described property due to the presence of residual contamination or the land use restrictions that were previously required by the Wisconsin Department of Natural Resources have been amended, as provided in Exhibit A].**

Signature: _____
Printed Name: _____

Subscribed and sworn to before me
this ____ day of _____, 20__.

Notary Public, State of _____

My commission _____

This document was drafted by _____.

Appendix 2: Example of a Written Determination

Written Determination by the
Wisconsin Department of Natural Resources

1. A Deed Restriction ("Restriction") was recorded in the office of the Register of Deeds for Brown County, Wisconsin, as Document # xxxxxxxx on December 30, 2005. At that time the property was owned by (NAME) and identified as parcel number AB-123 located at ADDRESS, WI (hereafter referred to as the Property).
2. The Restriction described above was required by the Wisconsin Department of Natural Resources ("WDNR") in conformance with s. NR 726.05(8) (a), Wis. Admin. Code, as a condition of granting case closure to the owner of the Property following the cleanup of chlorinated solvents released on the Property. Based on the site investigation, the release is likely related to the dry cleaning operations previously operated at the site. Final case closure was approved on February 8, 2006.
3. In 2013, the Property was merged with numerous other individual parcels to form a larger property owned by OWNER NAME Corporation and currently used as a NAME OF Store. This new larger property is also identified as parcel number AB-345 with an address of ADDRESS, WI.
4. The previously closed case was reopened on April 24, 2013, due to vapor intrusion concerns and significant remaining soil contamination underneath a building on the Property. Significant soil excavation activities took place in December 2013 and February 2014. All known soil contamination was removed. Following post-remediation groundwater and sub-slab vapor sampling, final case closure was approved on January 19, 2016. Cover maintenance was no longer required as a continuing obligation.
5. Therefore, the WDNR has determined that the previously filed Deed Restriction has been satisfied and no longer applies to the Property.
6. Other continuing obligations outlined in the January 19, 2016, closure letter remain in effect and are still binding for the Property.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By: Signature: _____
Printed Name:
Title: XX Region Remediation and Redevelopment Team Supervisor



WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

DOCUMENT ID

RR-19-0045-C

DOCUMENT TITLE

Process to Extinguish and Environmental Deed Restriction (RR-045)

PROGRAM/BUREAU

Remediation and Redevelopment

STATUTORY AUTHORITY OR LEGAL CITATION

Wis. Stats. ch. 292; Wis. Admin. Code ch. NR 700

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

August 26, 2019

DATE FINALIZED

September 16, 2019

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

September 16, 2019

Signature

Date