

CHAPTER 84C

CONSERVATION EASEMENTS

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84C 01 DEFINITIONS

As used in this chapter, unless the context otherwise requires

(1) "Conservation easement means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property

(2) "Holder means

(1) a governmental body empowered to hold an interest in real property under the laws of this state or the United States, or

(11) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder

History 1985 c 232 s 1

84C 02 CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance

(c) Except as provided in section 84C 03, clause (b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it

History 1985 c 232 s 2

84C 03 JUDICIAL ACTIONS

(a) An action affecting a conservation easement may be brought by

- (1) an owner of an interest in the real property burdened by the easement,
- (2) a holder of the easement,
- (3) a person having a third party right of enforcement, or
- (4) a person authorized by other law

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity

History 1985 c 232 s 3

84C 04 VALIDITY

A conservation easement is valid even though

- (1) it is not appurtenant to an interest in real property,
- (2) it can be or has been assigned to another 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 affirmative obligations upon the owner of an interest in the burdened property or upon the holder,
- (6) the benefit does not touch or concern real property, or
- (7) there is no privity of estate or of contract

History 1985 c 232 s 4

84C 05 APPLICABILITY

(a) This chapter applies to any interest created after August 1, 1985, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise

(b) This chapter applies to any interest created before August 1, 1985, if it would have been enforceable had it been created after August 1, 1985, unless retroactive application contravenes the constitution or laws of this state or the United States

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state

History 1985 c 232 s 5