

## **Subchapter 4**

### **— Conservation Easement Act**

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#### **15-20-401. Title.**

This subchapter shall be known and may be cited as the “Conservation Easement Act”.

**History.** Acts 1983, No. 567, § 6; A.S.A. 1947, § 50-1206.

#### **15-20-402. Definitions.**

As used in this subchapter, 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, archeological, or cultural aspects of real property;

(2) “Holder” means:

(A) Any state agency, county, city of the first class or city of the second class, or incorporated town empowered to hold an interest in real property under the laws of this state or the United States; or

(B) 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, archeological, or cultural aspects of real property; and

(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.** Acts 1983, No. 567, § 1; A.S.A. 1947, § 50-1201.

#### **15-20-403. Applicability and construction.**

(a) This subchapter applies to any interest created after July 4, 1983, which complies

with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This subchapter applies to any interest created before July 4, 1983, if it would have been enforceable had it been created after July 4, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This subchapter does not invalidate any otherwise valid interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, which was created under §§ 15-20-301 — 15-20-308, 15-20-310, and 15-20-312 — 15-20-316, Acts 1975, No. 882 [repealed], or any other law of this state.

(d) (1) This subchapter shall not be construed to imply that any restriction, easement, covenant, or condition which does not come within the purview of this subchapter, on account of any provisions hereof, shall be unenforceable.

(2) Nothing in this subchapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

(3) Nothing in this subchapter shall be construed to repeal or diminish any of the powers, functions, or responsibilities of any state agency, county, city of the first class or city of the second class, or incorporated town.

**History.** Acts 1983, No. 567, § 5; A.S.A. 1947, § 50-1205.

#### **15-20-404. Creation, conveyance, etc.**

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

**History.** Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

#### **15-20-405. Acceptance.**

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.

**History.** Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

#### **15-20-406. Duration.**

Except as provided in § 15-20-409(b), a conservation easement is unlimited in duration unless the instrument creating it provides otherwise.

**History.** Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

#### **15-20-407. Effect on existing interests.**

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.** Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

**15-20-408. 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.** Acts 1983, No. 567, § 4; A.S.A. 1947, § 50-1204.

**15-20-409. 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 subchapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(c) Conservation easements may be enforced by injunction or other proceeding in equity and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance.

**History.** Acts 1983, No. 567, § 3; A.S.A. 1947, § 50-1203.

**15-20-410. Easements held by Old State House Commission.**

(a) (1) Approval of the creation, modification, or termination of a conservation easement held by the Old State House Commission shall be executed by the Director of the Old State House Commission in accordance with the rules and regulations promulgated by the Old State House Commission to assure that conservation easements shall be in the public interest.

(2) Approval shall be evidenced by a certificate of approval, certificate of modification, or certificate of termination duly executed on behalf of the Old State House Commission and duly recorded in the deed records of the county in which the real property is located.

(b) In determining whether the conservation easement or its continuance is in the public interest, the Old State House Commission shall take into consideration any national, state, regional, and local comprehensive land use or development plan affecting the historical, architectural, archeological, or cultural aspects of the real property.

(c) A conservation easement held by the Old State House Commission may be modified or released, in whole or in part, by the Old State House Commission for such consideration, if any, as the Old State House Commission may determine, in the same

manner as the Old State House Commission may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice under the procedures established by the Old State House Commission.

**(d)** All easements in the name of the Arkansas Commemorative Commission are transferred to the Old State House Commission.

**History.** Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202; Acts 2001, No. 68, § 2.