

Title 33: PROPERTY
Chapter 7: CONVEYANCE OF REAL ESTATE
Subchapter 8-A: CONSERVATION EASEMENTS

§476. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 395, §3 (NEW).]

1. Conservation easement. "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; or maintaining or enhancing air or water quality of real property.

[1985, c. 395, §3 (NEW) .]

2. Holder. "Holder" means:

A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or [1985, c. 395, §3 (NEW).]

B. A nonprofit corporation 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; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property. [1985, c. 395, §3 (NEW).]

[1985, c. 395, §3 (NEW) .]

3. Real property. "Real property" includes without limitation surface waters.

[2007, c. 412, §1 (AMD) .]

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

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW). 2007, c. 412, §1 (AMD).

§477. Creation, conveyance, acceptance and duration

1. Conservation easement. Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned or partially released in the same manner as other easements created by written instrument. A conservation easement may be terminated or amended by the parties only as provided in section 477-A, subsection 2.

[2007, c. 412, §2 (AMD) .]

2. Right or duty. No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person

having a 3rd-party right of enforcement arises under a conservation easement unless it is accepted by any person having a 3rd-party right of enforcement.

[1985, c. 395, §3 (NEW) .]

3. Limitation. Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

A. The instrument creating it otherwise provides; or [1985, c. 395, §3 (NEW) .]

B. Change of circumstances renders the easement no longer in the public interest as determined by the court as provided in section 477-A, subsection 2, paragraph B in an action under section 478. [2007, c. 412, §3 (AMD) .]

[2007, c. 412, §3 (AMD) .]

4. Interest. An interest in real property in existence at the time a conservation easement is created shall not be impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

[1985, c. 395, §3 (NEW) .]

5. Entitled to enter land. The instrument creating a conservation easement must provide in what manner and at what times representatives of the holder of a conservation easement or of any person having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW). 2007, c. 412, §§2, 3 (AMD) .

§477-A. Conservation easement standards

1. Conservation values. A conservation easement executed on or after the effective date of this section must include a statement of the conservation purposes of the easement, the conservation attributes associated with the real property and the benefit to the general public intended to be served by the restriction on uses of the real property subject to the conservation easement.

[2007, c. 412, §4 (NEW) .]

2. Amendment and termination. Amendments and termination of a conservation easement may occur only pursuant to this subsection.

A. A conservation easement executed on or after the effective date of this section must include a statement of the holder's power to agree to amendments to the terms of the conservation easement in a manner consistent with the limitations of paragraph B.

[2007, c. 412, §4 (NEW) .]

B. A conservation easement may not be terminated or amended in such a manner as to materially detract from the conservation values intended for protection without the prior approval of the court in an action in which the Attorney General is made a party. In making this determination, the court shall consider, among other relevant factors, the purposes expressed by the parties in the easement and the public interest. If the value of the landowner's estate is increased by reason of the amendment or termination of a conservation easement, that increase must be paid over to the holder or to such nonprofit or governmental entity as the court may designate, to be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the easement. [2007, c. 412, §4 (NEW) .]

[2007, c. 412, §4 (NEW) .]

3. Monitoring. The holder of a conservation easement shall monitor the condition of the real property subject to the conservation easement at least every 3 years and shall prepare and retain a written monitoring report in its permanent records. The holder shall make available to the landowner, upon request, a copy of the monitoring report.

[2007, c. 412, §4 (NEW) .]

4. Failure to comply. Failure to comply with the requirements of subsection 1, subsection 2, paragraph A or subsection 3 does not invalidate a conservation easement otherwise entitled to the protections of this subchapter.

[2007, c. 412, §4 (NEW) .]

SECTION HISTORY

2007, c. 412, §4 (NEW) .

§478. Judicial actions

1. Action or intervention. An action affecting a conservation easement may be brought or intervened in by:

A. An owner of an interest in the real property burdened by the easement; [1985, c. 395, §3 (NEW) .]

B. A holder of the easement; [2007, c. 412, §5 (AMD) .]

C. A person having a 3rd-party right of enforcement; or [2007, c. 412, §5 (AMD) .]

D. The Attorney General; except that the Attorney General may initiate action seeking enforcement of a conservation easement only when the parties designated as having the right to do so under the terms of the conservation easement:

(1) Are no longer in legal existence;

(2) Are bankrupt or insolvent;

(3) Cannot be contacted after reasonable diligence to do so; or

(4) After 90 days' prior written notice by the Attorney General of the nature of the asserted failure, have failed to take reasonable actions to bring about compliance with the conservation easement. [2007, c. 412, §5 (NEW) .]

[2007, c. 412, §5 (AMD) .]

2. Intervention only. An action affecting a conservation easement may be intervened in by a political subdivision of the State in which the real property burdened by the easement is located, in accordance with court rules for permissive intervention.

[2007, c. 412, §5 (AMD) .]

3. Power of court. The court may permit termination of a conservation easement or approve amendment to a conservation easement that materially detracts from the conservation values it serves, as provided in section 477-A, subsection 2, paragraph B, and may enforce a conservation easement by injunction or proceeding at law and in equity . A court may deny equitable enforcement of a conservation easement only when it finds that change of circumstances has rendered that easement no longer in the public interest or no longer serving the publicly beneficial conservation purposes identified in the conservation easement. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

[2007, c. 412, §5 (AMD) .]

4. Confidentiality of records. Documents and records obtained by the Attorney General, which would otherwise not legally be subject to public disclosure, may be

shared with other public agencies but must be held as legally confidential under Title 1, section 402, unless disclosed in the course of a public proceeding in court.

[2007, c. 412, §5 (NEW) .]

No comparative economic test may be used to determine under this subchapter if a conservation easement is in the public interest or serves a publicly beneficial conservation purpose. [2007, c. 412, §5 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW). 2007, c. 412, §5 (AMD) .

§479. Validity

A conservation easement is valid even though: [1985, c. 395, §3 (NEW) .]

1. Not appurtenant to interest in real property. It is not appurtenant to or does not run with an interest in real property;

[1985, c. 395, §3 (NEW) .]

2. Assigned to another holder. It can be or has been assigned to another holder;

[1985, c. 395, §3 (NEW) .]

3. Not recognized at common law. It is not of a character that has been recognized traditionally at common law;

[1985, c. 395, §3 (NEW) .]

4. Negative burden. It imposes a negative burden;

[1985, c. 395, §3 (NEW) .]

5. Affirmative obligations. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

[1985, c. 395, §3 (NEW) .]

6. Benefit does not touch or concern real property. The benefit does not touch or concern real property;

[1985, c. 395, §3 (NEW) .]

7. No privity of estate or of contract. There is no privity of estate or of contract;

[2007, c. 412, §6 (AMD) .]

8. Does not run to successors or assigns. It does not run to the successor and assigns of the holder;

[2007, c. 412, §7 (AMD) .]

9. Acquired for tax delinquency. A lien has been established for property tax delinquency under Title 36, section 552, or title to the real property subject to the conservation easement has been acquired by procedures for enforcement and foreclosure of delinquent taxes under Title 36, chapter 105, subchapter 9; or

[2007, c. 412, §8 (NEW) .]

10. Merger. The title to the real property subject to the conservation easement has been acquired by the holder, unless the holder, with the consent of any 3rd party with rights of enforcement, replaces the conservation easement with legally binding restrictions under a conservation easement or declaration of trust at least as protective of the conservation values of the protected property as provided by the replaced easement.

[2007, c. 412, §9 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW). 2007, c. 412, §§6-9 (AMD) .

§479-A. Applicability

1. Interest created after effective date. This subchapter applies to any interest created after its effective date which complies with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

[1985, c. 395, §3 (NEW) .]

2. Conservation easement created before effective date. This subchapter applies to any conservation easement created before the effective date of this subchapter if the conservation easement would have been enforceable had it been created after the effective date of this subchapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

[1985, c. 395, §3 (NEW) .]

3. Subchapter does not invalidate interest. This subchapter 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 laws of this State.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW) .

§479-B. Uniformity of application and construction

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the subchapter among states enacting it.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY

1985, c. 395, §3 (NEW) .

§479-C. Conservation easement registry

A holder of a conservation easement that is organized or doing business in the State shall annually report to the Executive Department, State Planning Office the book and page number at the registry of deeds for each conservation easement that it holds, the municipality and approximate number of acres protected under each easement and such other information as the State Planning Office determines necessary to fulfill the purposes of this subchapter. The filing must be made by a date and on forms established by the State Planning Office to avoid duplicative filings when possible and otherwise reduce administrative burdens. The annual filing must be accompanied by a \$30 fee. The State Planning Office shall maintain a permanent record of the registration and report to the Attorney General any failure of a holder disclosed by the filing or otherwise known to the State Planning Office. The fees established under this section must be held by the State Planning Office in a nonlapsing, special account to defray the costs of maintaining the registry and carrying out its duties under this section. [2007, c. 412, §10 (NEW) .]

SECTION HISTORY

2007, c. 412, §10 (NEW).