WEST VIRGINIA CODE CHAPTER 20 ARTICLE 12

WV Legislature

§20-12-1. Short title.

This article shall be known and may be cited as the "Conservation and Preservation Easements Act".

WV Legislature

§20-12-2. Purpose of article.

The West Virginia Legislature recognizes the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of this state.

WV Legislature

§20-12-3. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Conservation easement" means a nonpossessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public benefit the natural, scenic or open-space values of real property; assuring its availability for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means:

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

(2) A charitable corporation, charitable association or charitable trust registered with the Secretary of State and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. Section 501(c)(3), or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Preservation easement" means a nonpossessory interest in an historical building.

(d) "Third-party right of enforcement" means a right provided in a conservation or preservation easement, in order 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.

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§20-12-4. Creation, transfer and duration.

(a) Except as otherwise provided in this article, a conservation or preservation 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 of a holder, successive holder named in the easement deed or person having a third-party right of enforcement arises under a conservation or preservation easement before the easement's acceptance by the holder, successive holder or third party with right of enforcement and a recordation of the acceptance.

(c) Except as provided in subsection (b), section five of this article, a conservation or preservation easement created after the effective date of this article may be perpetual in duration, but in no event shall be for a duration of less than twenty-five years.

(d) An interest in real property in existence at the time a conservation or preservation easement is created, including an unrecorded lease for the production of minerals or removal of timber, shall not be impaired unless the owner of such interest is a party to the easement or expressly consents to comply with the restriction of such easement.

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§20-12-5. Judicial and related actions.

(a) An action affecting a conservation or preservation easement may be brought by any of the following:

(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, agency or entity otherwise authorized by state or federal law.

(b) This article does not affect the power of a court to modify or terminate a conservation or preservation easement in accordance with the principles of law and equity consistent with the public policy of this article as stated under section two of this article, when the easement is broadly construed to effect that policy. Notwithstanding provision of law to the contrary, conservation and preservation easements shall be liberally construed in favor of the grants contained therein to effect the purposes of those easements and the policy and purpose of this article.

(c) A holder, governmental entity or other person may not exercise the right of eminent domain or the power of condemnation to acquire a conservation easement without condemning or exercising the right of eminent domain as to the entire fee interest of the property: Provided, That any public utility regulated pursuant to the provisions of chapter twenty-four of this code or any public service enterprise subject to the provisions of the Natural Gas Act, title XV, United States Code, Section 717, et seq., or the Federal Power Act, title XV, United States Code, Section 794a, et seq., or any successor statute for the regulation of public utility or public service business, may condemn land or an interest in land subject to a conservation or preservation easement for any purpose authorized by the governing regulatory statute or by the administrative agency established under the statute. Nothing in this article may be construed to limit the lawful exercise of the right of eminent domain or the power of condemnation by any person or entity having such power, or the right of any real property owner to compensation by reason of the lawful exercise of such right of eminent domain or power of condemnation for any estate or interest in real property except a conservation or preservation easement authorized by this article.

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§20-12-6. Validity.

(a) A conservation or preservation 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 as 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.

(b) To be enforceable under the provisions of this article, a conservation or preservation easement shall be recorded within sixty days of the effective date of the easement. Upon proper recording, the provisions of this article apply retroactively to the effective date of the easement.

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§20-12-7. Applicability.

(a) This article applies to any interest created after the effective date of this article, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

(b) This article applies to any interest created before the effective date when the interest would have been enforceable had it been created after its effective date, unless retroactive application contravenes the Constitution or laws of the United States or of this state. No conservation easement or preservation easement created prior to the effective date of this article may be invalidated by reason of the enactment of this article when the conservation easement or preservation easement was valid under the law in effect at the time of its creation.

(c) This article 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 another law of this state.

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§20-12-8. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting similar laws. Except as expressly otherwise provided, nothing contained in this article is intended to be construed to alter applicable established common law. In a manner consistent with common law, the granting of a conservation or preservation easement shall not subsequently restrict the right of the fee owner to further grant any other interest in real property to any person or entity when the grant does not materially impair the prior conservation or preservation easement. When a fee holder grants an interest beyond the conservation or preservation easement, he shall notify the holder of any conservation or preservation easement at least forty-five days prior to the execution of any subsequent easement or any other conveyance of an interest in land encompassed by the conservation or preservation easement.

WV Legislature