

Tennessee Conservation Easement Act of 1981

§66-9-301 Short Title

This part shall be known as the "Conservation Easement Act of 1981.

§66-9-302 Legislative Findings.

It is the finding of the general assembly that the protection of the state's land, water, geological, biological, historical, architectural, archaeological, cultural, and scenic resources is desirable for the purposes of maintaining and preserving the state's natural and cultural heritage, and for assuring the maintenance of the state's natural and social diversity and health, and for encouraging the wise management of productive farm and forest land.

§66-9-303 Part Definitions.

As used in this part, unless the context otherwise requires:

(1) (A) For purposes of easements granted before July 1, 2005, "conservation easement" means an easement in land or structures which:

- (i) Is held for the benefit of the people of Tennessee;
- (ii) Is specifically enforceable by its holder or beneficiary;
- (iii) Limits or obligates the holder of the servient estate, the holder's heirs, and assigns with respect to the use and management of the servient land, structures or features thereon, and/or activities conducted thereon, which limitations and obligations are intended to preserve, maintain or enhance the present condition, use or natural beauty of the land, geological, biological, historic, architectural, archaeological, cultural or scenic resources of the state of Tennessee; and
- (iv) Is recorded in the register's office of the county in which the easement is located;

(B) For purposes of easements granted on or after July 1, 2005, "conservation easement" means a non-possessory interest of a holder in real property imposing limitations or affirmative obligations on the owner of the servient estate, the owner's heirs, and assigns with respect to the use and management of the servient land, structures or features thereon, and/or activities conducted thereon, which limitations and affirmative obligations are intended to preserve, maintain or enhance the present condition, use or natural beauty of the land, the open-space value, the air or water quality, the agricultural, forest, recreational, geological, biological, historic, architectural, archaeological, cultural or scenic resources of the servient estate and is recorded in the register's office of the county in which the easement is located.

(C) "Conservation easement" also means an easement of view over the facade, or restrictions on the use of a structure included in the National Register or Tennessee Register whereby the external appearance of the structure is preserved by the sale, donation, or other surrender by the owner of the easement to a public body or exempt organization either:

- (i) In fee simple;
- (ii) For the owner's life or the life of another; or
- (iii) For a term of years; and
- (iv) Is recorded in the register's office of the county in which the easement is located;

(2) "Exempt organization" includes any organization which has received a determination of exemption from the Internal Revenue Service under § 501(c)(3) and § 509(a)(1) or (a)(2) of the Internal Revenue Code, compiled in 26 U.S.C. §§ 501, 509;

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- (3) "National Register of Historic Places," or "National Register," means that listing of the state's historic, archaeological, architectural, cultural, and environmental resources as nominated by the state's liaison officer and which is kept by the national park service, the United States department of the interior, pursuant to the National Historic Preservation Act of 1966 (P.L. 89-665). Such listing is published in the federal register on a regular basis;
- (4) "Public body" means the United States, states, counties, municipalities, metropolitan governments, the historic commission of any state, county, municipal, or metropolitan government, park or recreation authorities, and any other state, federal or local governmental entity; and
- (5) "Tennessee Register of Historic Places," or "Tennessee Register," means that listing of districts, sites, buildings, structures, and objects significant in Tennessee history, architecture, archaeology, and culture kept by the Tennessee historical commission pursuant to Title 4, Chapter 11, Part 2.
- (6) For purposes of conservation easements granted on or after July 1, 2005:
 - (A) "Holder" means a public body empowered to hold an interest in real property under the laws of the state or the United States; or
 - (B) "Holder" means 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.
- (7) "Third-party right of enforcement" means a right expressly provided in a conservation easement to enforce any of its terms granted to a public body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

§66-9-304 Easement severed from fee – Right of Entry.

- (a) A conservation easement shall remain severed from the fee unless returned by specific conveyance to the holder of the fee.
- (b) Conservation easements may contain public use clauses.
- (c) The holder of a conservation easement shall maintain the right of entry at reasonable times for inspection whether or not the easement specifically permits such rights of entry.

§66-9-305 Acquisition by Public Bodies.

- (a) In order to carry out the purposes of this part, any public body or organization may acquire and dispose of interests in land or structures or features thereon in the form of conservation easements. No conservation easement shall be acquired by eminent domain unless such easement is necessary for the accomplishment of a specific public project which has been authorized by statute. Any such acquisition by a state entity shall be subject to approval by the state building commission.
- (b) No private nonprofit organization shall exercise a power of eminent domain to acquire an easement under the provisions of this part even though such organization may otherwise have such power.
- (c) Any public body may designate a conservation easement in any real property in which it has an interest, if such property is listed on the National Register or the Tennessee Register, in order to provide protection to and assist in the preservation and protection of such property.

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- (d) A public body has all powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:
 - (1) Appropriate or borrow funds and make expenditures necessary to carry out the purposes of this chapter; and
 - (2) Apply for and accept and utilize grants and any other assistance from the federal government and any other public or private source, to give such security as may be required and to enter into and carry out contracts or agreements in connection with such grants or assistance.

§66-9-306 Validity of Easement.

No conservation easement shall be held unenforceable because of privity of estate or contract or lack of benefit to any other land, whether or not appurtenant to the servient land. No conservation easement shall be held automatically extinguished because of violation of its terms or frustration of its purposes.

§66-9-307 Enforcement.

- (a) An action affecting any conservation easement granted on or after July 1, 2005, 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 third-party right of enforcement;
 - (4) The attorney general if the holder is no longer in existence and there is no third-party right of enforcement; or
 - (5) A person authorized by other law.
- (b) Conservation easements granted before July 1, 2005 may be enforced by the holders and/or beneficiaries of the easement, or their bona fide representatives, heirs, or assigns.
- (c) Conservation easements may be enforced by injunction, proceedings in equity, or actions at law.

§66-9-308 Assessment for Tax Purposes

- (a)
 - (1) When a conservation easement is held by a public body or exempt organization for the purposes of this chapter, the subject real property shall be assessed on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the conservation easements.
 - (2) The value of the easement interest held by the public body or exempt organization shall be exempt from property taxation to the same extent as other public property.
 - (3) If a conservation easement in a structure is held by a public body or exempt organization for the term of a person's life or a term of years, the exemption shall apply for the length of the term and no longer.
- (b) The owner of the fee shall have all rights and powers to appeal any assessment of such interest on the same basis as provided by law for property tax assessment appeals.

§66-9-309 Applicability

The provisions of this part shall not affect any easement entered into prior to July 1, 1981, nor any rights, privileges or duties pursuant to such easements.