

Virginia Open-Space Land Act¹ and Virginia Conservation Easement Act²

VIRGINIA OPEN-SPACE LAND ACT

§ 10.1-1700. Definitions.

As used in this article, unless the context requires a different meaning:

"Open-space easement" means a nonpossessory interest of a public body in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Open-space land" means any land which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, or (v) wetlands as defined in § 28.2-1300.

"Public body" means any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or the Virginia Recreational Facilities Authority.

§ 10.1-1701. Authority of public bodies to acquire or designate property for use as open-space land.

To carry out the purposes of this chapter, any public body may (i) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land and (ii) designate any real property in which it has an interest of not less than five years' duration to be retained and used for the preservation and provision of open-space land. Any such interest may also be perpetual.

The use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located. No property or interest therein shall be acquired by eminent domain by any public body for the purposes of this chapter; however, this provision shall not limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter. (1966, c. 461, § 10-152; 1974, c. 259; 1981, c. 64; 1988, c. 891.)

¹ Va. Code Ann. §§ 10.1-1700 et seq. (Repl. Vol. 2006).

² Va. Code Ann. §§ 10.1-1009 et seq. (Repl. Vol. 2006).

§ 10.1-1702. Further powers of public bodies.

A. A public body shall have the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers:

1. To borrow funds and make expenditures;
2. To advance or accept advances of public funds;
3. To apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;
4. To make and execute contracts and other instruments;
5. In connection with the real property acquired and designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;
6. To insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;
7. To demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and
8. To exercise its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this Commonwealth, and to enter into agreements for joint or cooperative action.

B. For the purposes of this chapter, the Commonwealth or a county, city or town may:

1. Appropriate funds;
2. Issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the Commonwealth;

3. Exercise its powers under this chapter through a board or commission, or through such office or officers as its governing body by resolution determines or as the Governor determines in the case of the Commonwealth; and

4. Levy taxes and assessments.

(1966, c. 461, § 10-154; 1988, c. 891.)

§ 10.1-1703. Acquisition of title subject to reservation of farming or timber rights; acquisition of easements, etc.; property to be made available for farming and timber uses.

Any public body is authorized to acquire (i) unrestricted fee simple title to tracts; (ii) fee simple title to such land subject to reservation of rights to use such lands for farming or to reservation of timber rights thereon; or (iii) easements in gross or such other interests in real estate of not less than five years' duration as are designed to maintain the character of such land as open-space land. Any such interest may also be perpetual. Whenever practicable in the judgment of the public body, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter.

(1966, c. 461, § 10-158; 1974, c. 259; 1981, c. 64; 1988, c. 891.)

§ 10.1-1704. Diversion of property from open-space land use; conveyance or lease of open-space land.

A. No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

B. A public body may convey or lease any real property it has acquired and which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection A of this section.

(1966, c. 461, § 10-153; 1988, c. 891; 1997, c. 338.)

§ 10.1-1705. Chapter controlling over other laws; powers supplemental.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

(1966, c. 461, § 10-157; 1988, c. 891.)

VIRGINIA CONSERVATION EASEMENT ACT

§ 10.1-1009. Definitions.

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

"Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Holder" means a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C.A. § 501 (c) (3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property.

"Public body" means any entity defined in § 10.1-1700.

"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.

(1988, cc. 720, 891.)

§ 10.1-1010. Creation, acceptance and duration.

A. A holder may acquire a conservation easement by gift, purchase, devise or bequest.

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. A conservation easement shall be perpetual in duration unless the instrument creating it otherwise provides a specific time. For all easements, the holder shall (i) meet the criteria in § 10.1-1009 and (ii) either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years which has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.

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 in writing.

E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

F. This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or in any way limit the power of eminent domain as possessed by any public body. In any such proceeding the holder of the conservation easement shall be compensated for the value of the easement.

(1988, cc. 720, 891; 2000, c. 182; 2003, c. 1014.)

§ 10.1-1011. Taxation.

A. Where an easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement.

B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.

C. Notwithstanding the provisions of subsection B, land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any

county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

(1988, cc. 720, 891; 1993, c. 390; 1998, c. 487.)

§ 10.1-1012. Notification.

Whenever any instrument conveying a conservation easement is recorded after July 1, 1988, the party responsible for recording it or his agent shall mail certified copies thereof, together with notice as to the date and place of recordation, to the local jurisdiction in which the real property subject thereto is located, the Attorney General of the Commonwealth, the Virginia Outdoors Foundation and to any public body named in such instrument. Certified copies of the instrument creating such easement, together with information specifying the date and place of its recordation, shall be mailed to the local jurisdiction in which the real property subject thereto is located, the Attorney General of the Commonwealth, the Virginia Outdoors Foundation and to any public body named in such instrument. Whenever any conservation easement is on lands that are part of a historic landmark as certified, either by the United States or the Virginia Historic Landmarks Board, any notice required above shall also be given to the Virginia Historic Landmarks Board.

(1988, cc. 720, 891.)

§ 10.1-1013. Standing.

An action affecting a conservation easement may be brought by:

1. An owner of an interest in real property burdened by the easement;
2. A holder of the easement;
3. A person having an express third-party right of enforcement;
4. The Attorney General of the Commonwealth;
5. The Virginia Outdoors Foundation;
6. The Virginia Historic Landmarks Board;
7. The local government in which the real property is located; or

8. Any other governmental agency or person with standing under other statutes or common law.

(1988, cc. 720, 891.)

§ 10.1-1014. 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.

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.

(1988, cc. 720, 891.)

§ 10.1-1015. Conveyance to the Commonwealth.

Whenever any holder as defined in this chapter, or the successors or assigns thereof, shall cease to exist, any conservation easement and any right of enforcement held by it shall vest in the Virginia Outdoors Foundation, unless the instrument creating the easement otherwise provides for its transfer to some other holder or public body. In an easement vested in the Virginia Outdoors Foundation by operation of the preceding sentence, the Foundation may retain it or thereafter convey it to any other public body or any holder the Foundation deems most appropriate to hold and enforce such interest in accordance with the purpose of the original conveyance of the easement.

(1988, cc. 720, 891.)

§ 10.1-1016. Savings clause.

Nothing herein shall in any way affect the power of a public body under any other statute, including without limitation the Virginia Outdoors Foundation and the Virginia Historic Landmarks Board, to acquire and hold conservation easements or affect the terms of any such easement held by any public body.

(1988, cc. 720, 891.)