

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 42.**  
**REAL PROPERTY.**

**CHAPTER 2.**  
**CONSERVATION EASEMENTS.**

**2001 Edition**

**DISTRICT OF COLUMBIA OFFICIAL CODE**  
**CHAPTER 2. CONSERVATION EASEMENTS.**

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## CHAPTER 2. CONSERVATION EASEMENTS.

*Refs & Annos*

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1997, Act No. 715	5-29-1997 [FN*]	Code 1975, §§ 35-18-1 to 35-18-6.
Alaska	1989, c. 73	5-31-1989	AS 34.17.010 to 34.17.100.
Arizona	1985, c. 171	4-18-1985 [FN*]	A.R.S. §§ 33-271 to 33-276.
Arkansas	1983, No. 567		A.C.A. §§ 15-20-401 to 15-20-410.
Delaware	70 Del. Laws, c. 552	7-18-1996	7 Del. C. §§ 6901 to 6905.
District of Columbia	D.C.Law 6-113	5-16-1986	D.C. Official Code, 2001 Ed. §§ 42-201 to 42-205.
Georgia	Acts 1992, p. 2227	7-1-1992	O.C.G.A. §§ 44-10-1 to 44-10-8.
Idaho	1988, c. 222	7-1-1988	I.C. §§ 55-2101 to 55-2109.
Indiana	2002, P.L. 2-2002	7-1-2002	West's A.I.C. 32-23-5-1 to 32-23-5-8.
Kansas	1992, c. 302	5-22-1992 [FN*]	K.S.A. §§ 58-3810 to 58-3817.
Kentucky	1988, c. 251	4-9-1988 [FN*]	KRS 382.800 to 382.860.
Maine	1985, c. 395	6-21-1985 [FN*]	33 M.R.S.A. §§ 476 to 479-C.
Minnesota	1985, c. 232	5-24-1985 [FN*]	M.S.A. §§ 84C.01 to 84C.05.
Mississippi	1986, c. 404	3-27-1986	Code 1972, §§ 89-19-1 to 89-19-15.
Nevada	1983, c. 291	5-13-1983 [FN*]	N.R.S. 111.390 to 111.400.
New Mexico	1991, c. 15	3-16-1991 [FN*]	NMSA 1978, §§ 47-12-1 to 47-12-6.
Oklahoma	1999, c. 384	11-1-1999	60 Okl.St. Ann. §§ 49.1 to 49.8.
South Carolina	1991, Act No. 92	5-27-1991	Code 1976, §§ 27-8-10 to 27-8-80.
Texas	1983, c. 434	9-1-1983	V.T.C.A., Natural Resources Code §§ 183.001 to 183.005.
Virgin Islands	2006, c. 6841	7-19-2006[FN*]	12 V.I.C. §§ 601 to 607.
Virginia	1988, cc. 720, 891		Code 1950, §§ 10.1-1009 to 10.1-1016.
Wisconsin	1981, c. 261	4-27-1982	W.S.A. 700.40.
Wyoming	2005, c. 127	7-1-2005	Wyo.Stat. Ann. §§ 34-1-201 to 34-1-207.

[FN\*] Date of approval.

### § 42-201. DEFINITIONS.

For the purposes of this chapter, the term:

(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, ensuring 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, archaeological, or cultural aspects of real property.

(2) "Holder" means 1 of the following:

(A) A governmental body empowered to hold an interest in real property under the laws of the

District of Columbia 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, ensuring the availability of real property for agricultural, forestal, 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.

(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.

(May 16, 1986, D.C. Law 6-113, § 2, 33 DCR 1996.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 45-2601.

##### *Legislative History of Laws*

Law 6-113, the "District of Columbia Uniform Conservation Easement Act of 1986," was introduced in Council and assigned Bill No. 6-55, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 25, 1986, and March 11, 1986, respectively. Signed by the Mayor on March 24, 1986, it was assigned Act No. 6-143 and transmitted to both Houses of Congress for its review.

##### *Miscellaneous Notes*

Community Development Block Grant Program: Pursuant to Resolution 6-768, the "Community Development Block Grant Program Resolution of 1986," effective July 8, 1986, the Council authorized the Mayor to revise the proposed final statement to include the homestead housing preservation program as an activity to permit the use of CDBG funds for initial program staff, approved the revised final statement, and authorized the Mayor to submit the revised final statement to HUD.

##### *Uniform Law*

This section is based upon § 1 of the Uniform Conservation Easement Act. See 12 Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

## **§ 42-202. EXEMPTION FROM RECORDATION AND TRANSFER TAX.**

(a)(1) 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, provided that the recordation of any conservation easement as defined in § 42-201, or of any assignment, release, modification, termination, or other alteration of a conservation easement shall be exempt from the recordation tax imposed by § 42-1103, and from the transfer tax imposed by § 47-903.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply if the consideration for the conservation easement exceeds \$100 in value.

(b) No right or duty in favor of or against 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) Except as provided in § 42-203(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(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.

(e) A conservation easement is valid even under the following circumstances:

- (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.

(May 16, 1986, D.C. Law 6-113, § 3, 33 DCR 1996; Apr. 30, 1988, D.C. Law 7-104, § 25, 35 DCR 147.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 45-2602.

*Legislative History of Laws*

For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

*Uniform Law*

This section is based upon §§ 2 and 4 of the Uniform Conservation Easement Act. See 12 Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

**§ 42-202.01. RIGHTS OF THE HOLDER OF A CONSERVATION EASEMENT.**

Whenever a recorded conservation easement has been registered with the Mayor, written consent of the holder of the registered and recorded conservation easement shall be required prior to the recordation of a subdivision by the Office of the Surveyor, and to the issuance of a permit for construction, demolition, alteration, or repair, except solely for interior work. With respect to the affected property, a conservation easement shall be deemed registered with the Mayor 10 days after proof of a recorded conservation easement is presented to the Historic Preservation Division of the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs.

(May 16, 1986, D.C. Law 6-113, § 3a, as added Mar. 17, 1993, D.C. Law 9-233, § 2, 40 DCR 603.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 45-2602.1.

*Legislative History of Laws*

Law 9-233, the "District of Columbia Uniform Conservation Easement Act of 1986 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-122, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-364 and transmitted to both Houses of Congress for its review. D.C. Law 9-233 became effective on March 17, 1993.

**§ 42-203. PERSONS WHO MAY BRING ACTIONS.**

(a) An action affecting a conservation easement may be brought by 1 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 authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(May 16, 1986, D.C. Law 6-113, § 4, 33 DCR 1996.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 45-2603.

*Legislative History of Laws*

For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

*Uniform Law*

This section is based upon § 3 of the Uniform Conservation Easement Act. See 12 Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

## § 42-204. AFFECTED INTERESTS.

(a) This chapter applies to any interest created after May 16, 1986, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before May 16, 1986, if it would have been enforceable had it been created after May 16, 1986, unless retroactive application contravenes the laws of the District of Columbia or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement, a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of the District of Columbia.

(d) Repealed.

(e)(1) The deduction of a qualified conservation contribution as claimed under section 170 of the Internal Revenue Code of 1986 shall be allowed under § 47-1803.03.

(2) The conservation easement shall qualify as a qualified conservation contribution notwithstanding the inclusion of a provision in the easement that permits the creation of a lien on behalf of the holder of a conservation easement for the purposes of enforcing the easement, which lien does not have precedence over other lienholders, mortgagees, or holders of a deed of trust.

(3) This subsection shall apply to all instruments recorded at the Recorder of Deeds.

(May 16, 1986, D.C. Law 6-113, § 5, 33 DCR 1996; Oct. 1, 2002, D.C. Law 14-190, § 902, 49 DCR 6968; Apr. 4, 2003, D.C. Law 14-282, §§ 12, 13, 50 DCR 896.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 45-2604.

#### *Effect of Amendments*

D.C. Law 14-190 added subsec. (d).

D.C. Law 14-282 repealed subsec. (d); and added subsec. (e). Prior to repeal, subsec. (d) had read as follows:

"(d)(1)(A) Subject to subparagraph (B) of this paragraph, the deduction of a qualified conservation contribution as claimed under section 170 of the Internal Revenue Code of 1986 approved August 16, 1954 (68A Stat. 58; 26 U.S.C. § 170)('section 170'), shall be allowed under § 47-1803.03, notwithstanding the nonenforceability of the recorded instrument, the nonperpetual nature of the restriction, and the actual value of the contribution if the claimed value does not exceed 15% of the fair market value of the real property.

"(B) If the deduction is disallowed for federal income tax purposes, the deduction shall be disallowed under § 47-1803.03(b).

"(C) This paragraph shall apply to all instruments recorded at the Recorder of Deeds prior to October 1, 2002.

"(2)(A) The restriction (granted in perpetuity) of a qualified real property interest, as defined in section 170, shall further require the unqualified subordination of all mortgage and deed of trust interests in the real property, including the express subordination of such interests to a lien resulting from enforcement of the instrument that created the qualified conservation contribution. Subject to subparagraph (E) of this paragraph, the following language shall provide prima facie evidence of compliance with the requirement that the enforcement lien shall be superior in priority to any such interests:

"In the event of a violation of this easement, the grantee shall have, and the grantor, and mortgagee or trustee of the deed of trust, present or future, hereby grant to grantee, the following rights:

" '(a) The right to institute legal proceedings to enjoin such violation by ex parte, temporary, and permanent injunction, to require the restoration of the real property, including the facade, to its prior condition, to collect money damages, to be reimbursed for all costs and attorneys' fees, and to avail itself of all other legal and equitable remedies;

" '(b) The right to enter upon the land and into the improvement of the real property in order to correct such violation and hold grantor and the real property responsible for the cost thereof; and

" '(c) The right to seek to place a lien against the real property to secure the payment of any of the obligations arising under this instrument, and such lien shall enjoy the same priority as this instrument regardless of whether such lien was foreseeable.'

"(B) The assent to the terms of the instrument of the grantor, and mortgagee or trustee of a deed of trust, or their respective duly appointed and recorded attorneys, in fact, shall be expressly stated and acknowledged

according to law.

"(C) The instrument, and any return required by the Recorder of Deeds, shall specifically recite the value of the qualified conservation contribution and any cost and donation incurred by the grantor thereof.

"(D) No deduction shall be allowed for a qualified conservation contribution that does not satisfy the requirements of this paragraph.

"(E) If the deduction is disallowed for federal income tax purposes, the deduction shall be disallowed under § 47-1803.03(a).

"(F) This paragraph shall apply to all instruments recorded at the Recorder of Deeds on or after October 1, 2002."

#### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 14 of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

#### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 902 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 13 of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see §§ 13(a) and 14 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14- 510, October 23, 2002, 49 DCR 10247).

#### *Legislative History of Laws*

For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Law 14-282, the "Tax Clarity and Recorder of Deeds Act of 2002", was introduced in Council and assigned Bill No. 14-537, which was referred to Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-616 and transmitted to both Houses of Congress for its review. D.C. Law 14-282 became effective on April 4, 2003.

#### *References in Text*

Section 170 of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to 26 U.S.C.A. § 170.

#### *Miscellaneous Notes*

Short title of title IX of Law 14-190: Section 901 of D.C. Law 14-190 provided that title IX of the act may be cited as the Conservation Easement Deed of Gift Clarification Amendment Act of 2002. This title was repealed by D.C. Law 14- 282.

#### *Uniform Law*

This section is based upon § 5 of the Uniform Conservation Easement Act. See 12 Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

## **§ 42-205. APPLICATION AND CONSTRUCTION OF CHAPTER.**

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

(May 16, 1986, D.C. Law 6-113, § 6, 33 DCR 1996.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 45-2605.

##### *Legislative History of Laws*

For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

This section is based upon § 6 of the Uniform Conservation Easement Act. See 12 Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.