

VIRGINIA
TITLE 10.1. CONSERVATION
SUBTITLE I. ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF
CONSERVATION AND RECREATION
CHAPTER 10.1. VIRGINIA CONSERVATION EASEMENT ACT
Va. Code Ann. § 10.1-1009 (2006)

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.