

ARTICLE 30.5

CONSERVATION EASEMENTS

Law reviews: For article, "Conservation Easements: A General Practitioner's Overview", see 19 Colo. Law. 221 (1990); for comment, "Open Space Procurement Under Colorado's Scenic Easement Law", see 60 U. Colo. L. Rev. 383 (1989).

Section

- 38-30.5-101. Legislative intent.
- 38-30.5-102. Conservation easement in gross.
- 38-30.5-103. Nature of conservation easements in gross.
- 38-30.5-104. Creation of conservation easements in gross.
- 38-30.5-105. Residual estate.
- 38-30.5-106. Recordation upon public records.
- 38-30.5-107. Release - termination.
- 38-30.5-108. Enforcement - remedies.
- 38-30.5-109. Taxation.
- 38-30.5-110. Other interests not impaired.
- 38-30.5-111. Validation.

38-30.5-101. Legislative intent.

The general assembly finds and declares that it is in the public interest to define conservation easements in gross, since such easements have not been defined by the judiciary. Further, the general assembly finds and declares that it is in the public interest to determine who may receive such easements and for what purpose such easements may be received.

History

Source: L. 76: Entire article added, p. 750, § 1, effective July 1.

38-30.5-102. Conservation easement in gross.

"Conservation easement in gross", for the purposes of this article, means a right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area, airspace above the land or water, or water rights beneficially used upon that land or water area, owned by the grantor appropriate to the retaining or maintaining of such land, water, airspace, or water rights, including improvements, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value.

Source: L. 76: Entire article added, p. 750, § 1, effective July 1. L. 2003: Entire section amended, p. 990, § 1, effective August 6.

Annotations

Editor's note: This section was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.
Annotations

ANNOTATION

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Law reviews. For article, "Protecting Open Space and Wildlife Habitat Under Colorado Law", see 24 Colo. Law. 2729 (1995).

38-30.5-103. Nature of conservation easements in gross.

(1) A conservation easement in gross is an interest in real property freely transferable in whole or in part for the purposes stated in section 38-30.5-102 and transferable by any lawful method for the transfer of interests in real property in this state.

(2) A conservation easement in gross shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding that it may be negative in character.

(3) A conservation easement in gross shall be perpetual unless otherwise stated in the instrument creating it.

(4) The particular characteristics of a conservation easement in gross shall be those granted or specified in the instrument creating the easement.

(5) A conservation easement in gross that encumbers water or a water right as permitted by section 38-30.5-104 (1) may be created only by the voluntary act of the owner of the water or water right and may be made revocable by the instrument creating it.

History

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. L. 2003: (5) added, p. 990, § 2, effective August 6.

Annotations

Editor's note: Subsection (5) was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

38-30.5-104. Creation of conservation easements in gross.

(1) A conservation easement in gross may only be created by the record owners of the surface of the land and, if applicable, owners of the water or water rights beneficially used thereon by a deed or other instrument of conveyance specifically stating the intention of the grantor to create such an easement under this article.

(2) A conservation easement in gross may only be created through a grant to or a reservation by a governmental entity or a grant to or a reservation by a charitable organization exempt under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, which organization was created at least two years prior to receipt of the conservation easement.

(3) Repealed.

(4) Conservation easements relating to historical, architectural, or cultural significance may only be applied to buildings, sites, or structures which have been listed in the

national register of historic places or the state register of historic properties, which have been designated as a landmark by a local government or landmarks commission under the provisions of the ordinances of the locality involved, or which are listed as contributing building sites or structures within a national, state, or locally designated historic district.

(5) If a water right is represented by shares in a mutual ditch or reservoir company, a conservation easement in gross that encumbers the water right may be created or revoked only after sixty days' notice and in accordance with the applicable requirements of the mutual ditch or reservoir company, including, but not limited to, its articles of incorporation and bylaws as amended from time to time.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. L. 85: (3) repealed and (4) amended, p. 1203, §§ 3, 1, effective July 1. L. 99: (2) amended, p. 632, § 49, effective August 4. L. 2003: (1) amended and (5) added, p. 991, § 3, effective August 6; (2) amended, p. 1022, § 1, effective August 6.

Annotations

Editor's note: (1) Subsections (1) and (5) were contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

(2) Section 2 of chapter 142, Session Laws of Colorado 2003, provides that the act amending subsection (2) applies to conservation easements created prior to, on, or after August 6, 2003. The act was passed without a safety clause. For an explanation concerning the effective date, see page vii of this volume.

38-30.5-105. Residual estate.

All interests not transferred and conveyed by the instrument creating the easement shall remain in the grantor of the easement, including the right to engage in all uses of the lands or water or water rights affected by the easement that are not inconsistent with the easement or prohibited by the easement or by law.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. L. 2003: Entire section amended, p. 991, § 4, effective August 6.

Annotations

Editor's note: This section was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

38-30.5-106. Recordation upon public records.

Instruments creating, assigning, or otherwise transferring conservation easements in gross must be recorded upon the public records affecting the ownership of real property in order to be valid and shall be subject in all respects to the laws relating to such recordation.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1.

38-30.5-107. Release - termination.

Conservation easements in gross may, in whole or in part, be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land or water rights or in any other manner in which easements may be lawfully terminated, released, extinguished, or abandoned.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. L. 2003: Entire section amended, p. 991, § 5, effective August 6.

Annotations

Editor's note: This section was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

38-30.5-108. Enforcement - remedies.

(1) No conservation easement in gross shall be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed as running with the land.

(2) Actual or threatened injury to or impairment of a conservation easement in gross or the interest intended for protection by such easement may be prohibited or restrained by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by an owner of the easement.

(3) In addition to the remedy of injunctive relief, the holder of a conservation easement in gross shall be entitled to recover money damages for injury thereto or to the interest to be protected thereby. In assessing such damages, there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages, the loss of scenic, aesthetic, and environmental values.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1.

38-30.5-109. Taxation.

Conservation easements in gross shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to the assessment and taxation of interests in real property. Real property subject to one or more conservation easements in gross shall be assessed, however, with due regard to the restricted uses to which the property may be devoted. The valuation for assessment of a conservation easement which is subject to assessment and taxation, plus the valuation for assessment of lands subject to such easement, shall equal the valuation for assessment which would have been determined as to such lands if there were no conservation easement.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1.

38-30.5-110. Other interests not impaired.

No interest in real property cognizable under the statutes, common law, or custom in effect in this state prior to July 1, 1976, nor any lease or sublease thereof at any time, nor any transfer of a water right or any change of a point of diversion decreed prior to the recordation of any conservation easement in gross restricting a transfer or change shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this article. No provision of this article shall be construed to mean that conservation easements in gross were not lawful estates in land prior to July 1, 1976. Nothing in this article shall be construed so as to impair the rights of a public utility, as that term is defined by section 40-1-103, C.R.S., with respect to rights-of-way, easements, or other property rights upon which facilities, plants, or systems of a public utility are located or are to be located. Any conservation easement in gross concerning water or water rights shall be subject to the "Water Right Determination and Administration Act of 1969", as amended, article 92 of title 37, C.R.S., and any decree adjudicating the water or water rights.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1. L. 2003: Entire section amended, p. 991, § 6, effective August 6.

Annotations

Editor's note: This section was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

38-30.5-111. Validation.

(1) Any conservation easement in gross created on or after July 1, 1976, but before July 1, 1985, that would have been valid under this article except for section 38-30.5-104 (3) is valid and shall be a binding, legal, and enforceable obligation.

(2) Any conservation easement in gross affecting water rights created prior to August 6, 2003, shall be a binding, legal, and enforceable obligation if it complies with the requirements of this article.

Source: L. 85: Entire section added, p. 1203, § 2, effective July 1. L. 2003: Entire section amended, p. 992, § 7, effective August 6.

Annotations

Editor's note: (1) Section 38-30.5-104 (3), which is referenced in this section, was repealed by L. 85, p. 1203, § 3, effective July 1, 1985.

(2) This section was contained in a 2003 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.