

TITLE 55
PROPERTY IN GENERAL

CHAPTER 21
UNIFORM CONSERVATION EASEMENT ACT

55-2101. DEFINITIONS. As used in this chapter:

(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, assuring its availability 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.

(2) "Holder" means:

(a) A governmental body empowered to hold an interest in real property under the laws of this state 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, 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.

(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.

[55-2101, added 1988, ch. 222, sec. 1, p. 422.]

55-2102. CONSERVATION EASEMENT CREATED -- CONVEYANCE -- ACCEPTANCE -- DURATION. (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.

(2) 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.

(3) Except as provided in subsection (2) of section [55-2103](#), Idaho Code, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(4) 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.

[55-2102, added 1988, ch. 222, sec. 1, p. 423.]

55-2103. PERSONS WHO MAY BRING ACTIONS -- POWERS OF THE COURT. (1) An action affecting a conservation easement may be brought by:

(a) An owner of an interest in the real property burdened by the easement;

- (b) A holder of the easement;
- (c) A person having a third-party right of enforcement; or
- (d) A person authorized by other law.

(2) 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.

[55-2103, added 1988, ch. 222, sec. 1, p. 423.]

55-2104. VALIDITY OF CONSERVATION EASEMENTS. 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.

[55-2104, added 1988, ch. 222, sec. 1, p. 423.]

55-2105. APPLICABILITY OF THIS CHAPTER. (1) This chapter applies to any interest created after its effective date which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise. The instrument creating the conservation easement shall state it was created under the provisions of this chapter.

(2) This chapter applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

[55-2105, added 1988, ch. 222, sec. 1, p. 423.]

55-2106. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 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.

[55-2106, added 1988, ch. 222, sec. 1, p. 424.]

55-2107. EMINENT DOMAIN. A conservation easement pursuant to this chapter shall not be created through eminent domain proceedings pursuant to [chapter 7, title 7](#), Idaho Code.

[55-2107, added 1988, ch. 222, sec. 1, p. 424.]

55-2108. OTHER INTERESTS NOT IMPAIRED BY CONSERVATION EASEMENTS. No interest in real property cognizable under the statutes, common law or custom in effect in this state prior to the effective date of this chapter shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this chapter. No provision of this chapter shall be construed to mean that conservation easements were not lawful estates in land prior to the effective date of this chapter. Nothing in this chapter shall be construed so as to impair the rights of any entity with eminent domain authority pursuant to [chapter 7, title 7](#), Idaho Code, with respect to right-of-way, easements or other property rights upon which facilities, plants, highway systems or other systems of that entity are located or are to be located. Nothing in this chapter shall be construed so as to impair or conflict with the provisions of [chapter 46, title 67](#), Idaho Code, relating to the preservation of historic sites, or with the provisions of [chapter 43, title 67](#), Idaho Code, relating to the preservation of recreational places.

[55-2108, added 1988, ch. 222, sec. 1, p. 424.]

55-2109. TAXATION. The granting of a conservation easement across a piece of property shall not have an effect on the market value of property for ad valorem tax purposes and when the property is assessed for ad valorem tax purposes, the market value shall be computed as if the conservation easement did not exist.

[55-2109, added 1988, ch. 222, sec. 1, p. 424.]