

AGENDA

ULC DRAFTING COMMITTEE UNIFORM EASEMENT RELOCATION ACT February 1-2, 2019 Washington, DC

- I. Greetings and Introductions - committee members, reporter, advisor and observers
- II. Line by Line Reading - Discussion of Substantive Issues as Raised During Reading.

These issues may include the following, among others:

Name of the Act - We have requested that the Act's name be changed to Uniform Easement Relocation Act. We are awaiting a decision from the Executive Committee.

Explain why legislative notes and double brackets are included.

Section 102 (a) - Definition of Conservation easement and related terms - Although our definitions of conservation easement and related terms are based on the same or similar definitions set forth in the Uniform Conservation Easement Act (UCEA also forms the basis for the same definitions in the Restatement (Third) of Property: Servitudes), the definitions included in this draft are somewhat different at the request of the Land Trust Alliance. A few of the revised definitions as they appear in our draft are more similar to the Restatement definitions. Should our definitions track even more closely the definitions in UCEA? The Reporter has also created a new section 102(c) to make sections 102(a) and (b) more concise. Section 102(a) also includes "granted in perpetuity" at the request of the Land Trust Alliance.

Section 204 - Non-Waiver - This section makes clear that the relocation rights established by the act are not subject to waiver by contracting parties. The committee should decide if it wants to give states the option of deleting or modifying this provision as noted in the draft Legislative Note.

Section 301 - Section (a) confirms the freedom of an easement holder and a servient estate owner to agree to relocate an easement on any terms mutually acceptable to both parties outside the provisions of the act. Do we need to include Section (a) in the act?

Section 301 - Section (b) - the committee at our last meeting decided that if the parties consent to the relocation of an easement that consent would take the relocation outside the scope of the act, and a section to that effect would be unnecessary. This section recognizes that although the dominant estate owner may consent to the relocation of the easement, the dominant estate owner may still want to be protected by the provisions of the act. Consequently, the dominant estate owner now has the right to condition her consent on the applicability of the act.

Section 301 as now written may require us to take a careful look at Section 304, see below, as these two sections might now be read to suggest that all consented to relocations are covered by the act.

Section 302 now includes a reference to “affirmative, easement-related benefits” in subsection (3). Should we keep this?

Section 303 - This section requires notice of a relocation to be given to the easement holder and voluntary lien holders with an interest in the servient or dominant estate. Should we expand the notice requirement to include other parties who might have an interest in the relocation?

Section 304 - Should this section refer back to the conditional consent of section 301(b) to alleviate any interpretation that a person who requests relocation and a person who merely consents to that relocation in a writing have chosen that the act applies to that relocation?

Section 306 - Subsection (1) has been included at the request of the Land Trust Alliance. Does the committee want to keep this provision? Subsection (5) also uses the phrase “affirmative, easement-related benefits.” Should we keep this?

Section 309 - Should we include a date upon which the relocation document must be recorded so that we minimize issues that may arise during an extended period without public notice of the relocation, e.g., the transfer of land?

Section 310 - Should our notice provision simply state that notice is to be given in a manner consistent with service of process in the state?

Section 311 - This section makes clear that a relocation under the act does not trigger an event of default or due on sale clause. Is any additional language necessary to safeguard the parties with respect to lien holders? In other words, an act that purports to protect the dominant estate owner from all possible damage that might be caused by a change in location of his easement has to include full protection from default under his loan documents. Did we go far enough to protect the owner? Do we need additional language to protect the owner from foreclosure by voluntary lien holders other than mortgagees and deed of trust trustees under loan documents?

III. Identification of Additional Potential Observers

IV. Next Steps