

UNIFORM EASEMENT RELOCATION ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM EASEMENT RELOCATION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Easement Relocation Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Appurtenant easement” means a nonpossessory property interest that is tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(2) “Conservation easement” means a nonpossessory property interest created for one or more of the following conservation purposes:

(A) retaining or protecting the natural, scenic, wildlife, wildlife habitat, biological, ecological, or open-space values of real property;

(B) ensuring the availability of real property for agricultural, forest, outdoor recreational, or open-space uses;

(C) protecting natural resources, including wetlands, grasslands, and riparian areas;

(D) maintaining or enhancing air or water quality;

(E) preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property; or

(F) any other purpose under [cite to applicable state law].

(3) “Dominant estate” means an estate or interest in real property that is benefitted by an appurtenant easement.

(4) “Easement” means a nonpossessory property interest that provides a right to enter, use, or enjoy real property owned by or in the possession of another which obligates the owner or possessor not to interfere with the entry, use, or enjoyment

permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

(5) “Easement in gross” means a nonpossessory property interest that is not tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(6) “Easement holder” means:

(A) in the case of an appurtenant easement, the dominant estate owner; or

(B) in the case of an easement in gross, public-utility easement, conservation easement, or negative easement, the grantee of the easement or a successor.

(7) “Lessee of record” means a person holding a lessee’s interest under a recorded lease or memorandum of lease.

(8) “Negative easement” means a nonpossessory property interest whose primary purpose is to impose on a servient estate owner a duty not to engage in a specified use of the estate.

(9) “Order” means a final action, judgment, or decree of a court which terminates a civil action, decides some matter litigated by the parties, operates to divest some right, or completely disposes of the subject matter and the rights of the parties.

(10) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11) “Public-utility easement” means a nonpossessory property interest in which the easement holder is a publicly regulated or publicly owned utility under federal law or law of this state. The term includes an easement benefitting an intrastate utility, an

interstate utility, or a utility cooperative. The term “utility cooperative” means a non-profit entity whose purpose is to deliver a utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or telecommunications, to its customers or members and includes an electric cooperative, rural electric cooperative, rural water district, and rural water association.

(12) “Real property” means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. The term includes the interest of a lessor and lessee and, unless the interest is personal property under law of this state other than this [act], an interest in a common-interest community.

(13) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Security instrument” means a mortgage, deed of trust, security deed, contract for deed, lease, or other record that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by acquisition or retention of a lien, a lessor’s interest under a lease, or title to the real property. A record is a security instrument even if it also creates or provides for a security interest in personal property. The term includes a modification or amendment of a security instrument and a record creating a lien on real property to secure an obligation under a covenant running with the real property or owed by a unit owner to a common-interest community association.

(15) “Security-interest holder of record” means a person holding an interest in real property created by a recorded security instrument.

(16) “Servient estate” means an estate or interest in real property that is burdened by an easement.

(17) “Title evidence” means a title insurance policy, preliminary title report or binder, title insurance commitment, abstract of title, attorney’s opinion of title based on examination of public records or on an abstract of title, or any other means of reporting the state of title to real property which is customary in the locality.

(18) “Unit” means a physical portion of a common-interest community designated for separate ownership or occupancy with boundaries described in a declaration establishing the common-interest community.

Legislative Note: Paragraph (2) allows a state to reference any other applicable state law that specifies additional purposes that a conservation easement may serve other than those listed in Paragraph (2)(A) through (E).

SECTION 3. SCOPE; EXCLUSIONS.

(a) Except as otherwise provided in subsection (b), this [act] applies to an easement established by express grant or reservation or by prescription, implication, necessity, estoppel, or other method for creating an easement.

(b) This [act] may not be used to relocate:

(1) a public-utility easement, conservation easement, or negative easement; or

(2) an easement if the proposed location would encroach an area of any estate burdened by a conservation easement or would interfere with the use or enjoyment of a public-utility easement or an easement appurtenant to a conservation easement.

(c) This [act] does not apply to relocation of an easement by consent.

SECTION 4. RIGHT OF SERVIENT ESTATE OWNER TO RELOCATE

EASEMENT. A servient estate owner may relocate an easement under this [act] only if the relocation does not materially:

(1) lessen the utility of the easement;

(2) after the relocation, increase the burden on the easement holder in its reasonable use and enjoyment of the easement;

(3) impair an affirmative, easement-related purpose for which the easement was created;

(4) during or after the relocation, impair the safety of the easement holder or others entitled to use and enjoy the easement;

(5) during the relocation, disrupt the use and enjoyment of the easement by the easement holder or others entitled to use and enjoy the easement, unless the servient estate owner substantially mitigates the duration and nature of the disruption;

(6) impair the physical condition or use of, or the value of the dominant estate or improvements on the dominant estate; or

(7) impair the value of the collateral of a security-interest holder of record in the servient estate or dominant estate, impair a real-property interest of a lessee of record in the dominant estate, or impair a real-property interest of record of any other person in the servient estate or dominant estate.

SECTION 5. COMMENCEMENT OF CIVIL ACTION.

(a) A servient estate owner must commence a civil action to obtain an order to relocate an easement under this [act].

(b) A servient estate owner that commences a civil action under subsection (a) shall serve a summons and complaint on:

- (1) the easement holder whose easement is the subject of the relocation;
- (2) a security-interest holder of record of an interest in the servient estate or dominant estate;
- (3) a lessee of record of an interest in the dominant estate; and
- (4) any other person, other than the owner of any interest in oil, gas, or minerals unless the purpose of the easement is to facilitate oil, gas, or mineral development, if the relocation would encroach on an area of the servient estate or dominant estate burdened by a real-property interest of record owned by that person.

(c) A complaint under this section must contain or be accompanied by:

- (1) a statement of intent of the servient estate owner to seek the relocation;
- (2) a statement of the nature, extent, and anticipated dates of commencement and completion of the proposed relocation;
- (3) information sufficient to identify the current and proposed locations of the easement;
- (4) a statement of the reason the easement is eligible for relocation under Section 3;
- (5) a statement of the reason the proposed relocation satisfies the conditions for relocation under Section 4; and
- (6) a statement that the servient estate owner has made a reasonable attempt to notify the holders of any public-utility easement, conservation easement, or negative easement on the servient estate or dominant estate of the proposed relocation.

(d) A document in recordable form executed by a person designated as a party to the civil action under subsection (b)(2), (3), or (4), in which the person states that it waives any right it may have to contest or obtain relief in connection with the relocation, or in which it subordinates its interest to the proposed relocation, may be filed at the commencement of the proceeding or by motion at any time before the final order. On filing of the document, the court may issue an order dismissing the person from any requirement to answer or participate further in the civil action.

SECTION 6. REQUIRED FINDINGS; ORDER.

(a) The servient estate owner may not obtain an order approving the relocation of an easement unless the court determines that the servient estate owner has:

(1) established that the easement is eligible for relocation under Section 3;

and

(2) satisfied the conditions for relocation under Section 4.

(b) An order approving relocation of an easement must:

(1) state that the order was issued in accordance with this [act];

(2) recite the recording data of the instrument creating the easement, if any, [and] any amendments [, and any preservation notice as defined under [cite to this state's marketable title act]];

(3) identify the immediately preceding location of the easement;

(4) describe in a legally sufficient manner the new location of the easement;

(5) describe all mitigation required of the servient estate owner during relocation;

(6) refer in detail to the plans and specifications of all improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(7) specify all conditions to be satisfied by the servient estate owner to relocate the easement and construct all improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(8) include a provision for payment by the servient estate owner of expenses under Section 7;

(9) include a provision for compliance by the parties with the obligation of good faith arising under Section 8; and

(10) instruct the servient estate owner to record the affidavit, if required under Section 9(a), when the servient estate owner substantially completes relocation.

(c) An order issued under subsection (b) may include any other provision consistent with this [act] for the fair and equitable relocation of an easement.

(d) Before a servient estate owner proceeds with a relocation, the owner must record a certified copy of the order issued under subsection (b) in the land records of all jurisdictions in which the servient estate is located.

Legislative Note: The bracketed language in subsection (b)(2) is applicable only in a state that has a marketable title act. The additional language requires a servient estate owner seeking to complete a relocation under the act to include in the order required by this section the recording data regarding a preservation notice filed by an easement holder who recorded such a notice to preserve the effectiveness of an easement originally recorded before the statutory root of title.

SECTION 7. EXPENSES OF RELOCATION. A servient estate owner is responsible for all reasonable expenses associated with the relocation of an easement under this [act] as determined by the court under Section 6(b), including the expense of:

- (1) constructing improvements on the servient estate or dominant estate in conformity with the order issued under Section 6;
- (2) during the relocation, mitigating disruption in the use and enjoyment of the easement by the easement holder or another person entitled to use and enjoy the easement;
- (3) obtaining governmental approvals or permits required to relocate the easement and construct necessary improvements;
- (4) preparing and recording, in the form required by the recording statutes of this state, the certified copy required by Section 6(d) and any other document required to be recorded;
- (5) any title work that may be required to complete relocation or may be required by a party to the civil action as a result of the relocation;
- (6) applicable premiums for title insurance coverage related to the relocation;
- (7) experts necessary to review plans and specifications for an improvement to be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans and specifications referenced in the order under Section 6(b)(6);
- (8) payment of any maintenance cost associated with the relocated easement which is greater than the maintenance cost associated with the easement before relocation; and
- (9) obtaining third-party consents required to relocate the easement.

SECTION 8. DUTY TO COOPERATE IN GOOD FAITH. After the court issues an order under Section 6 approving a relocation and the servient estate owner

commences the process of relocation, the servient estate owner, the easement holder, and all other parties in the civil action shall act in good faith to facilitate the relocation of the easement in compliance with this [act].

SECTION 9. RELOCATION AFFIDAVIT.

(a) When the relocation of an easement is substantially complete and the easement holder can enter, use, and enjoy the easement in the new location, the servient estate owner shall record an affidavit certifying that the easement has been relocated in the land records of all jurisdictions in which the servient estate is located and shall send a copy of the recorded affidavit to the easement holder and parties to the civil action by certified mail.

(b) Until an affidavit under subsection (a) is recorded and sent, the easement holder has the right to enter, use, and enjoy the easement in the current location, subject to the court's order under Section 6 approving relocation.

(c) If the order under Section 6 does not require an improvement to be constructed as a condition of the relocation, recording the order under Section 6(d) constitutes relocation.

SECTION 10. LIMITED EFFECT OF RELOCATION.

(a) Relocation of an easement under this [act]:

(1) is not a new transfer or a new grant of an interest in the servient estate or the dominant estate;

(2) is not a breach or default of or otherwise trigger a due-on-sale clause or other transfer-restriction clause under a security instrument, except as otherwise determined by a court under law other than this [act];

(3) is not a breach or default of a lease, except as otherwise determined by a court under law other than this [act];

(4) is not a breach or default by the servient estate owner of a recorded document affected by the relocation except as otherwise determined by a court under law other than this [act];

(5) does not affect the priority of the easement with respect to other real-property interests of record burdening the area of the servient estate on which the easement was located prior to the relocation; and

(6) is not a fraudulent conveyance or voidable transaction under any law of this state.

(b) This [act] does not affect any other method of relocating an easement permitted under law of this state other than this [act].

SECTION 11. NON-WAIVER. The right of a servient estate owner to relocate an easement under this [act] may not be waived, excluded, or restricted by agreement even if:

(1) the instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of this [act];

(2) the instrument creating the easement requires consent of the easement holder to amend the terms of the easement; or

(3) the location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be

given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 14. TRANSITIONAL PROVISION. This [act] applies to an easement created before, on, or after [the effective date of this [act]].

[SECTION 15. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

[SECTION 16. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)]

SECTION 17. EFFECTIVE DATE. This [act] takes effect