

AGENDA

ULC DRAFTING COMMITTEE ON RELOCATION OF NON UTILITY EASEMENTS

November 2-3, 2018
Loews Ventana Canyon
7000 North Resort Drive
Tucson, AZ 85750
520-299-2020

- I. Introductions - committee members, reporter, advisor and observers
- II. ULC Drafting Process and Role of Participants
- III. Study Committee Recommendations and Drafting Committee Charge
- IV. Line by Line Reading - Discussion of Substantive Issues as Raised During Reading.

These issues may include the following, among others:

Section 101 - Should the title of the act remain the same, because exclusions from the act include negative easements in addition to non-utility easements, and may include other easements, like railroad easements?

Section 102 (a) - Definition of Conservation easement and related terms - Although the definitions of conservation easement and related terms are based on the same or similar definitions set forth in the Uniform Conservation Easement Act, they are slightly different. Should the definitions track even more closely the definitions in UCEA? Should we use the definitions given to us by the Land Trust Alliance? (UCEA definitions and Land Trust Alliance definitions will be distributed)

Section 102(d) - Definition of Easement - Should we limit the scope of the act in Section 201 by explicitly stating which easements are excluded from the act, rather than excluding them in the definition of "Easement" in Section 102?

Section 201 - In addition to negative easements and utility easements, should other easements, e.g., railroad easements, be excluded from the scope of the act? To forestall any question as to whether we intend to

include certain easements within the scope of the act, *e.g.*, easements in which the government is a holder or easements contained in restrictive covenants, should we add a comment to that effect?

Section 202 - Should the act have retroactive effect? If so, do we have a taking problem?

Section 203 and Section 305 - The Restatement provision starts with the following language: “ Unless expressly denied by the terms of an easement”. These words give the parties to an easement a right to limit the operation of the act. Our language denies that right in (a) Section 203, making the act applicable to easements even if they contain specified locations or requiring consent of the parties generally to amend the easement or specifically to relocate the easement), and (b) depending on our decision with respect to Section 305, Section 305, giving the parties to an easement the right to opt out. Should we permit relocation on terms broader than the Restatement?

Section 301 - (a) The showing necessary for relocation is to permit normal use or development or to make improvements on or to the servient estate. Should we increase the burden on the easement holder by requiring a greater or stronger reason for the relocation?

(b) Should Section 301 be divided such that the reasons for relocation only appear in Section 301 and the legislative protections appear in Section 302 with the judicial protections?

(c) With respect to the easement related interests of the easement holder, have we been protective enough or have we been overly protective:

- (i) “significantly lessen” means that it might lessen somewhat;
- (ii) “Increase” is not modified by anything including “significantly”;
- (iii) same with “frustrate”?

(d) Should the right to relocate only belong to the servient estate owner?

Section 303 - Should other costs be listed, *e.g.*, reasonable attorneys' fees? Should the parties have a right to split costs differently than as set forth in the act?

Section 305 - Should the parties to an easement have a right to opt out? If not, then should we include specific language, *e.g.*, in Section 203, that makes clear that the rights conferred under the act cannot be limited by contract?

Section 306 (a) - Should the servient estate owner be required to notify interested parties in addition to the easement holder, *e.g.*, lien holders or tenants under recorded leases?

Section 307 - 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 308 (b) - Should anyone other than the servient estate owner make the determination that the easement holder's identity or location is unknown or not reasonably ascertainable?

V. Identification of Additional Potential Observers

VI. Work Plan and Next Steps