

Title 34 Property

Chapter 39 Conservation and Preservation Restrictions on Real Property

R.I. Gen. Laws § 34-39-1

§ 34-39-1. Purpose.

The purpose of this chapter is to grant a special legal status to conservation restrictions and preservation restrictions so that landowners wishing to protect and preserve real property may do so without uncertainty as to the legal effect and enforceability of those restrictions. This chapter is further intended to provide the people of Rhode Island with the continued diversity of history and landscape that is unique to this state without great expenditures of public funds.

History of Section.

P.L. 1976, ch. 231, § 1.

§ 34-39-2. Definitions.

(a) A "conservation restriction" shall mean a right to prohibit or require a limitation upon or an obligation to perform acts on or with respect to or uses of a land or water area, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retain or maintain the land or water area, or is appropriate to provide the public the benefit of the unique features of the land or water area, including improvements thereon predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space, wildlife, or forest use, or in other use or condition consistent with the protection of environmental quality.

(b) A "preservation restriction" shall mean a right to prohibit or require a limitation upon or an obligation to perform acts on or with respect to or uses of a structure or site historically significant for its architecture, archaeology, or associations, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the structure or site or in any order of taking, which right, limitation or obligation is appropriate to the preservation or restoration of the structure or site.

History of Section.

P.L. 1976, ch. 231, § 1.

§ 34-39-3. Restrictions enforceable.

(a) No conservation restriction held by any governmental body or by a charitable corporation, association, trust, or other entity whose purposes include conservation of land or water areas or of a particular area, and no preservation restriction held by any governmental body or by a charitable corporation, association, trust, or other entity whose purposes include preservation of structures or sites of historical significance or of a particular structure or site, shall be unenforceable against any owner of the restricted land or structure on account of lack of privity of estate or contract, or lack of benefit to particular land, or on account of the benefit being assignable or being assigned to any other governmental body or to any entity with like purposes, or on account of any other doctrine of property law which might cause the termination of the restriction such as, but not limited to, the doctrine of merger and tax delinquency.

(b) This section shall not be construed to imply that any restriction easement, covenant, or condition which is not covered hereunder shall, on account of any provisions hereof, be unenforceable.

(c) The restrictions shall not be subject to the thirty year limitation on restrictive covenants provided in § 34-4-21.

(d) The attorney general, pursuant to his or her inherent authority, may bring an action in the superior court to enforce the public interest in such restrictions.

(e) The court in any judicial proceeding, or the decision maker in any arbitration or

other alternative dispute resolution proceeding, in addition to any other relief ordered, may award the prevailing party, reasonable attorney's fees and costs incurred in the action or proceeding.

(f) A court action affecting a conservation restriction held by a private land trust, as defined in § 42-17.1-2(28)(ii), may only be brought or intervened in by:

(1) An owner of property interest in the real property burdened by the conservation restriction;

(2) A holder of the conservation restriction;

(3) A person having a third-party right of enforcement stated in the recorded conservation restriction; or

(4) The attorney general as provided in subsection (d) of this section.

History of Section.

P.L. 1976, ch. 231, § 1; P.L. 1988, ch. 198, § 1; P.L. 1988, ch. 292, § 1; P.L. 2010, ch. 307, § 1; P.L. 2010, ch. 312, § 1; P.L. 2011, ch. 116, § 1; P.L. 2011, ch. 120, § 1; P.L. 2012, ch. 317, § 1; P.L. 2012, ch. 352, § 1.

§ 34-39-4. Interests in real estate.

Conservation and preservation restrictions are interests in real estate and a document creating a restriction shall be deemed a conveyance of real estate for purposes of chapters 11 and 13 of this title. A restriction may be enforced by an action at law or by injunction or other proceeding in equity.

History of Section.

P.L. 1976, ch. 231, § 1.

§ 34-39-5. Release of restriction.

(a) Subject to the express terms of a conservation or preservation restriction: a restriction held by the state may be released in the same manner as land held by the state may be sold under chapter 7 of title 37; a restriction held by cities and towns

may be released in the same manner as land held by cities and towns may be sold under § 45-2-5; and a restriction held by any other governmental body may be released in accordance with applicable statutes, regulations, and procedures.

(b) A charitable corporation, association, or other entity holding a restriction may release that restriction in accordance with the express terms of a restriction, applicable bylaws, or charter provisions of the holding entity, and applicable statutes and regulations.

(c) A conservation or preservation restriction may not be terminated or amended in such a manner as to materially detract from the conservation or preservation values intended for protection without the prior approval of the court in an action in which the attorney general has been made a party. Termination may be approved only when it is found by the court that the conservation or preservation restriction does not serve the public interest or publicly beneficial conservation or preservation purpose, taking into account, among other things, the purposes expressed by the parties in the restriction. An amendment that materially detracts from a specific conservation or preservation value intended for protection may be approved only when it is found by the court that the proposed amendment: is between a separate distinct conservation or preservation restriction holder and the fee landowner; creates a net gain in the overall conservation or preservation purpose for which it was intended; and is consistent with the conservation or preservation purposes expressed by the parties in the restriction and the public conservation or preservation interest. No such approval may be sought except with the consent of the holder. If the value of the landowner's estate is increased by reason of the amendment or termination of a conservation or preservation restriction, that increase shall be paid over to the holder, or to such nonprofit or governmental entity as the court may designate, to be used for the protection of conservation lands or historic resources consistent, as nearly as possible, with the stated publicly beneficial conservation or preservation purposes of the restriction.

History of Section.

P.L. 1976, ch. 231, § 1; P.L. 2011, ch. 116, § 1; P.L. 2011, ch. 120, § 1; P.L. 2016, ch. 78, § 1; P.L. 2016, ch. 80, § 1.

§ 34-39-6. Use of eminent domain against conservation restrictions.

Any state or local agency that is exercising a right of eminent domain over any land which is protected with a conservation restriction or preservation restriction, shall notify the agency or organization that holds the conservation or preservation restriction and the Rhode Island department of environmental management at the same time they are notifying fee property owners of their intentions to condemn the properties. Such notification shall include an explanation of the public purpose for which the land protected by the conservation or preservation restriction is being condemned.

History of Section.

P.L. 2013, ch. 427, § 1; P.L. 2013, ch. 533, § 1.