

## Indiana Conservation Easement Enabling Laws

IC § 32-23-5

*Current through 2020*

### IC 32-23-5 -- Chapter 5. Uniform Conservation Easement Act

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#### IC 32-23-5-1 Application and construction of chapter

Sec. 1. (a) This chapter applies to any interest created after September 1, 1984, that complies with this chapter, whether the interest is designated:

- (1) as a conservation easement;
- (2) as a covenant;
- (3) as an equitable servitude;
- (4) as a restriction;
- (5) as an easement; or
- (6) otherwise.

(b) This chapter applies to any interest created before September 1, 1984, if the interest would have been enforceable had the interest been created after September 1, 1984, unless retroactive application contravenes the constitution or laws of Indiana or the United States.

(c) This chapter does not invalidate any interest, whether designated:

- (1) as a conservation easement;
- (2) as a preservation easement;
- (3) as a covenant;
- (4) as an equitable servitude;
- (5) as a restriction;
- (6) as an easement; or
- (7) otherwise;

if the designated interest is enforceable under another law of this state.

(d) This chapter shall be applied and construed to effectuate the general purpose of the chapter to make uniform the laws with respect to the subject of the chapter among the states that enact language consistent with this chapter.

*[Pre-2002 Recodification Citations: 32-5-2.6-5; 32-5-2.6-6.]*

*As added by P.L.2-2002, SEC.8.*

#### IC 32-23-5-2 "Conservation easement"

Sec. 2. As used in this chapter, "conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations with the purpose of:

- (1) retaining or protecting natural, scenic, or open space values of real property;
- (2) assuring availability of the real property for agricultural, forest, recreational, or open space use;
- (3) protecting natural resources;
- (4) maintaining or enhancing air or water quality; or
- (5) preserving the historical, architectural, archeological, or cultural aspects of real property.

*[Pre-2002 Recodification Citation: 32-5-2.6-1 part.]*

*As added by P.L.2-2002, SEC.8.*

### **IC 32-23-5-3 "Holder"**

Sec. 3. As used in this chapter, "holder" means any of the following:

- (1) A governmental body that is empowered to hold an interest in real property under the laws of Indiana or the United States.
- (2) A charitable corporation, charitable association, nonprofit corporation, or charitable trust, the purposes or powers of which include:
  - (A) retaining or protecting the natural, scenic, or open space values of real property;
  - (B) assuring the availability of real property for agricultural, forest, recreational, or open space use;
  - (C) protecting natural resources;
  - (D) protecting property bordering lakes;
  - (E) maintaining or enhancing air or water quality; or
  - (F) preserving the historical, architectural, archeological, or cultural aspects of real property.

*[Pre-2002 Recodification Citation: 32-5-2.6-1 part.]*

*As added by P.L.2-2002, SEC.8. Amended by P.L.49-2013, SEC.1.*

### **IC 32-23-5-4 "Third party right of enforcement"**

Sec. 4. As used in this chapter, "third party right of enforcement" means a right that is:

- (1) provided in a conservation easement to enforce any of the conservation easement's terms; and
- (2) granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

*[Pre-2002 Recodification Citation: 32-5-2.6-1 part.]*

*As added by P.L.2-2002, SEC.8.*

### **IC 32-23-5-5 Creation, conveyance, etc., of easements; acceptance; recordation; duration; rights of parties and others protected**

Sec. 5. (a) Except as otherwise provided in this chapter, a conservation easement may be:

- (1) created;
  - (2) conveyed;
  - (3) recorded;
  - (4) assigned;
  - (5) released;
  - (6) modified;
  - (7) terminated; or
  - (8) otherwise altered or affected;
- in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third party right of enforcement does not arise under a conservation easement before the conservation easement is accepted by the holder and the acceptance is recorded.

(c) Except as provided in section 6(b) of this chapter, a conservation easement is unlimited in duration unless the instrument creating the conservation easement provides otherwise.

(d) An interest in real property is not impaired by a conservation easement if the interest exists at the time the conservation easement is created, unless the owner of the interest is a party to the conservation easement or consents to the conservation easement.

*[Pre-2002 Recodification Citation: 32-5-2.6-2.]*

*As added by P.L.2-2002, SEC.8.*

### **IC 32-23-5-6 Actions authorized; power of court**

Sec. 6. (a) An action that affects a conservation easement may be brought by:

- (1) an owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third party right of enforcement; or
- (4) a person authorized by other law.

(b) 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, or the termination of a conservation easement by agreement of the grantor and grantee.

*[Pre-2002 Recodification Citation: 32-5-2.6-3.]*

*As added by P.L.2-2002, SEC.8.*

### **IC 32-23-5-7 Validity of conservation easements**

Sec. 7. A conservation easement is valid even though:

- (1) the conservation easement is not appurtenant to an interest in real property;
- (2) the conservation easement can be or has been assigned to another holder;
- (3) the conservation easement is not of a character that has been recognized traditionally at common law;
- (4) the conservation easement imposes a negative burden;
- (5) the conservation easement 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.

*[Pre-2002 Recodification Citation: 32-5-2.6-4.]*

*As added by P.L.2-2002, SEC.8.*

### **IC 32-23-5-8 Taxation**

Sec. 8. For the purposes of [IC 6-1.1](#), real property that is subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement.

*[Pre-2002 Recodification Citation: 32-5-2.6-7.]*

*As added by P.L.2-2002, SEC.8.*

<http://iga.in.gov/legislative/laws/2020/ic/titles/032#32-23-5>