

An Act Respecting Community Easements

Short Title

1 This Act may be cited as the *Community Easements Act*.

Interpretation

2 (1) In this Act,

- (a) "community easement" means an easement that meets the purposes of Section 4;
- (b) "easement holder" means an eligible body under Section 8;
- (c) "Minister" means the Minister of Natural Resources;
- (d) "owner" means the legal holder of the fee simple interest in land that is subject to a community easement, and includes an heir, executor, administrator, successor, assignee, receiver, receiver manager, liquidator or trustee of the owner.

(2) Where the lands to which a document relates are not registered pursuant to the *Land Registration Act*, any reference in this Act to a document being registered or filed in the appropriate registry shall, to the extent it applies to that document, be read as a reference to that document being registered pursuant to the *Registry Act* in the office of the registrar of deeds appointed pursuant to that Act for the registration district in which the lands to which the document relates are located.

(3) Where the lands to which a document relates are registered pursuant to the *Land Registration Act*, any reference in this Act to a document being registered or filed in the appropriate registry shall, to the extent it applies to that document, be read as a reference to that document being recorded in the register established, pursuant to that Act, for the parcel in which the lands are located.

Application of Act

3 (1) This Act and the regulations bind Her Majesty in right of the Province and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

(2) This Act binds Her Majesty in right of Canada and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

(3) For greater certainty, the persons referred to in subsections (1) and (2) are subject to an order and other remedies pursuant to this Act and the regulations.

(4) Nothing in this Act affects a right or a remedy with respect to a community easement under any other Act or under the common law or equity if that right or remedy is not inconsistent with any right or remedy under this Act.

(5) An interest in real property in existence at the time a community easement is created is not affected by the community easement unless the owner of the interest is a party to the community easement or consents to it.

(6) This Act does not affect the power of a court to modify or terminate a community easement in accordance with the principles of law and equity.

Community easement is agreement

4 A community easement is an agreement entered into between an owner and an easement holder that

- (a) grants rights and privileges to the easement holder over the owner's land that relate to the purposes for which the community easement is granted;
- (b) may impose obligations, either positive or negative, on the owner or the easement holder, or both, respecting the owner's land that relate to the purposes for which the community easement is granted; and
- (c) is made for the purpose of
 - (i) retaining or protecting public access over and community recreational or open-space use of real property,
 - (ii) assuring that real property remains available for agricultural use;
 - (iii) assuring that real property remains available for working forest use; or
 - (iv) protecting any other value prescribed by the regulations.

Duration of community easement

5 (1) A community easement may exist for a stated period or in perpetuity.

(2) An easement holder may not, by possession, occupation or use of an owner's land, whether in accordance with the terms of the community easement or otherwise, obtain any possessory or prescriptive title in or to the land.

(3) An owner is not liable for a breach of a community easement that occurs after the owner ceases to own the land.

Easement runs with land

6 Subject to this Act, a community easement, whether positive or negative in nature, runs with the land to which it relates for the period, if any, set out in the community easement even though the easement holder owns no other land that would be accommodated or benefited by the community easement.

Contents of community easement

7 A community easement shall contain

- (a) the names and mailing addresses of the parties to the community easement;
- (b) where applicable, the unique parcel identification number that is assigned to a parcel pursuant to the *Land Registration Act*
- (c) a description of the land to which the community easement relates, by metes and bounds, a plan of survey, or any other means sufficient to identify the land;
- (d) a sketch of the land to which the community easement relates;
- (e) where the community easement does not exist in perpetuity, the period for which the community easement is to exist;
- (f) the specific purpose under this Act for which the community easement is granted;
- (g) the practices permitted, restricted or prohibited on the land to which the community easement relates and a description of those practices;
- (h) the conservation, restoration or enhancement practices that may be undertaken by the easement holder; and
- (i) any other information prescribed by the regulations.

Eligible bodies

8 Any of the following bodies is eligible to hold a community easement:

- (a) Her Majesty in right of the Province or any agency of Her Majesty in right of the Province;
- (b) Her Majesty in right of Canada or any agency of Her Majesty in right of Canada;
- (c) a municipality or any agency of a municipality;

- (d) any organization designated by the Governor in Council as a conservation organization under the *Conservation Easements Act*;
- (e) any other organization designated pursuant to the regulations.

Amendment of community easement

9 A community easement may be amended by written agreement between the owner and the easement holder.

Assignment of community easement

10 A community easement may, with the consent of the owner and subject to any terms in the community easement, be assigned in writing by the easement holder to any eligible body.

Registration of community easement

11 (1) The easement holder shall submit the community easement and any amendment or assignment thereof for registration in the appropriate land registration office.

(2) The registrar of the land registration office shall, within thirty days after registration or recording, forward a copy of the community easement, amendment or assignment to the Minister.

Community easement does not lapse

12 A community easement does not lapse by reason only of

- (a) non enforcement;
- (b) the use of the land to which the community easement relates for a purpose that is inconsistent with the purposes of the community easement; or
- (c) a change in the use of land that surrounds or is adjacent to the land to which the community easement relates.

Termination or assumption of community easements

13 (1) A community easement may be terminated by a written agreement between the easement holder and the owner.

(2) Where a written agreement is made pursuant to subsection (1), the easement holder shall, within ninety days of the date of the agreement, file a copy of the agreement in the appropriate land registration office.

(3) The registrar of the land registration office in which a document referred to in subsection (2) is registered shall, within ninety days of registration, forward a copy of the document to the Minister.

(4) Where an easement holder ceases to exist, the owner shall notify the Minister in writing that the easement holder no longer exists and the Minister shall, within ninety days of receiving the notice, send a copy of the notice to all the eligible bodies.

(5) Any eligible body may, with the consent of the Minister, elect to assume the obligations of the easement holder referred to in subsection (4) and accept the rights and privileges respecting the community easement by providing the Minister with a written notice advising the Minister of the election within ninety days after the notice from the Minister has been sent to the eligible body pursuant to subsection (4).

(6) Where no eligible body elects to assume the obligations of an easement holder that has ceased to exist, the Minister may elect to assume the obligations of the easement holder and accept the rights and privileges respecting the community easement by giving the owner a written notice advising of the election within one hundred and eighty days after the Minister has sent the notices to the eligible bodies pursuant to subsection (4).

(7) A written notice referred to in subsection (5) or (6) shall be registered in the appropriate land registration office.

(8) Where neither the Minister nor an eligible body elects to assume the obligations of the easement holder, the community easement is terminated and the Minister shall file a notice of termination in the appropriate land registration office and provide a copy of the notice to the owner.

(9) A community easement may be modified or terminated by the Minister, with the approval of the Governor in Council, if the Minister determines that it is in the public interest to modify or terminate the community easement. [this is different from the CEA; provision taken from Alberta's conservation easement legislation]

Where easement holder no longer eligible body

14 Where an easement holder ceases to be an eligible body, the easement holder is deemed to have ceased to exist for all purposes of Section 13.

Enforcement in Supreme Court

15 (1) The obligations in a community easement, whether positive or negative, may be enforced by an action in the Supreme Court of Nova Scotia by the owner or the easement holder.

(2) In an action pursuant to subsection (1), the Supreme Court of Nova Scotia may

(a) grant any relief or remedy available at common law to any of the parties referred to in subsection (1);

- (b) order the defendant to take any action the Court considers appropriate to restore or remedy any harm to the land to which the community easement relates;
- (c) prohibit any activity on the land to which the community easement relates that the Court considers contrary to any of the purposes of the community easement.

Regulations

16 (1) The Governor in Council may make regulations

- (a) prescribing purposes for which a community easement may be granted;
- (b) designating organizations for the purpose of clause 8(e);
- (c) respecting the information that must be included in a community easement;
- (d) defining any word or expression used in but not defined in this Act;
- (e) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

Proclamation

17 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.