

A Guided Tour of the Conservation Easement Enabling Statutes – Appendix C

APPENDIX C

Checklist of Useful Statutory Provisions

The following checklist is offered as one way of simplifying the review process for practitioners and legislators who are considering an amendment to their respective enabling statutes. Inclusion or exclusion on this checklist is not an endorsement and does not reflect any policy statement. Rather, this checklist is meant to prompt the question of whether inclusion of such a provision would be desirable in any given state. Where appropriate, states that have such provisions are listed in parentheses.

- Clear opening policy statement (Pennsylvania, West Virginia)
- Clear definition of holder
- Clear statement on attorney general standing (No: Alabama, Montana, New Mexico, South Dakota, Wyoming) (Yes: Arizona, Connecticut, Illinois, Maine, Mississippi, Tennessee, Virginia)
- Public approval process for easements (Massachusetts, Montana, Nebraska, Virginia)
- Comprehensive amendment and termination restrictions (Maine, Massachusetts, Montana, Nebraska)
- Provision barring estoppel, laches, and waiver from defeating an easement (New York)
- Provision barring termination of easement by property tax lien foreclosure (Florida, Maine)
- Provision barring termination of easement by merger (Maine, Mississippi)
- Coordination of land-use permit process with existence of easement (Connecticut, District of Columbia, Georgia)
- Attorney fees provision (California, Hawaii, Massachusetts)
- Damage award provision (California, Colorado, Connecticut, Hawaii, Illinois)
- Buyer/seller notice provision (Maryland)
- Holder monitoring obligations (Maine)
- Copies of easements to central register or government agency (Illinois, Maine, Mississippi, Montana)
- Backup holder provision (Pennsylvania and Virginia)
- Favorable property tax treatment (California, Colorado, Georgia, Indiana, Missouri, Nebraska, New Jersey, North Carolina, Oregon, South Carolina, Texas, Virginia)
- Liberal construction provision (Pennsylvania, West Virginia)
- Substantive or procedural or compensation provisions concerning application of eminent domain to protected properties (Florida, Illinois, Massachusetts, Pennsylvania)
- Clear statement about duration (most states)
- Exemption from marketable title statutes (Illinois, Iowa)