

# TITLE 34 Property

## CHAPTER 34-39

### Conservation and Preservation Restrictions on Real Property

#### SECTION 34-39-3

**§ 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 attorneys' 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 paragraph 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 34-39-3(d).

#### 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.)

**§ 34-39-5 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 or amendment that materially detracts from the conservation or preservation values intended for protection may be approved only when it is found by the court that the conservation or preservation restriction, or the provision proposed to be amended, as the case may be, 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. 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 non-profit or governmental entity as the court may designate, to be used for the protection of conservation lands or historic resources consistent, as nearly 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.)