

Chapter 127

(Senate Bill 25)

AN ACT concerning

**Real Property – Conservation Easements, Covenants, Restrictions, and
Conditions – Recording Notice**

FOR the purpose of authorizing the Maryland Agricultural Land Preservation Foundation, the Maryland Historical Trust, the Maryland Environmental Trust, certain other land trusts, a county, and the Department of Natural Resources to record notice of certain easements, covenants, restrictions, and conditions in the land records of the county in which the property interest is located; specifying the information required to be provided in the notice; requiring that the notice be indexed for recording in a certain manner; stating that failure to record the notice in accordance with this Act does not impair the rights or interests of the holders of the easement, covenant, restriction, or condition; and generally relating to conservation easements, covenants, restrictions, and conditions.

BY repealing and reenacting, without amendments,

Article – Natural Resources

Section 3–2A–01(a) and (d)

Annotated Code of Maryland
(2018 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Real Property

Section 2–118

Annotated Code of Maryland
(2015 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Natural Resources**3–2A–01.**

(a) In this subtitle the following words have the meanings indicated.

(d) “Land trust” means a qualified conservation organization that:

(1) Is a qualified organization under § 170(h)(3) of the Internal Revenue Code and regulations adopted under § 170(h)(3); and

(2) Has executed a cooperative agreement with the Maryland Environmental Trust.

Article – Real Property

2–118.

(a) Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of this section whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest in the water or land areas, or the improvement or appurtenance thereto, so restricted, which is enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas, or the improvement or appurtenance thereto, if the restriction is executed in compliance with the requirements of this article for the execution of deeds or the Estates and Trusts Article for the execution of wills.

(b) A restriction as provided in subsection (a) of this section may be for any of the following purposes:

(1) Construction, placement, preservation, maintenance in a particular condition, alteration, removal, or decoration of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or other materials;

(3) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in a manner as to affect the surface or otherwise alter the topography of the area;

(4) Removal or destruction of trees, shrubs, or other vegetation;

(5) Surface use except for purposes of preserving the water or land areas, or the improvement or appurtenance thereto;

(6) Activities affecting drainage, flood control, water conservation, erosion control, soil conservation, or fish or wildlife habitat preservation;

(7) Preservation of exposure of solar energy devices; or

(8) Other acts or uses having any relation to the preservation of water or land areas or the improvement or appurtenance thereto.

(c) If the restriction is not granted for the benefit of any dominant tract of land, it is enforceable with respect to the servient land, both at law and in equity, as an easement in gross, and as such it is inheritable and assignable.

(d) A restriction provided for by this section may be extinguished or released, in whole or in part, in the same manner as other easements.

(e) If any grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker's intention to subject any interest or estate in property to public use for the preservation of agricultural, historic, or environmental qualities fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate, it passes to the Maryland Agricultural Land Preservation Foundation, the Maryland Historical Trust, or the Maryland Environmental Trust in any proceedings under §§ 14-301 and 14-302 of the Estates and Trusts Article.

(f) (1) This subsection applies only to land that is subject to an agricultural land preservation easement granted to the Maryland Agricultural Land Preservation Foundation on or before December 31, 1999.

(2) Unless the deed granting the easement expressly provides otherwise, the grant of an agricultural land preservation easement governing two or more separate parcels of land owned by the same grantor under separate deeds or two or more parcels separately identified and described in the same deed does not consolidate the parcels for any other purpose, if the parcels are described separately in the deed granting the easement.

(3) Notwithstanding any other provision of law, one of the parcels of land described under paragraph (2) of this subsection:

(i) May be conveyed separately to a child of the original grantor with the approval of the Maryland Agricultural Land Preservation Foundation in accordance with § 2-513.2 of the Agriculture Article and the criteria, eligibility requirements, and procedure for an agricultural subdivision and corrective easement established by regulation by the Maryland Agricultural Land Preservation Foundation; but

(ii) Shall remain subject to the agricultural land preservation easement in perpetuity.

(G) (1) IF AN EASEMENT, COVENANT, RESTRICTION, OR CONDITION HAS BEEN GRANTED, DEVISED, DEDICATED, RESERVED, OR DONATED TO THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION, THE MARYLAND HISTORICAL TRUST, THE MARYLAND ENVIRONMENTAL TRUST, ANOTHER LAND TRUST AS DEFINED IN § 3-2A-01 OF THE NATURAL RESOURCES ARTICLE, A COUNTY, OR THE DEPARTMENT OF NATURAL RESOURCES, A NOTICE OF THE

EASEMENT, COVENANT, RESTRICTION, OR CONDITION MAY BE RECORDED IN THE LAND RECORDS OF THE COUNTY IN WHICH THE PROPERTY INTEREST IS LOCATED.

(2) A NOTICE RECORDED UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST:

(I) STATE THE NAME AND CURRENT ADDRESS OF THE CURRENT HOLDER OF THE EASEMENT, COVENANT, RESTRICTION, OR CONDITION;

(II) CONTAIN A STATEMENT THAT THE EASEMENT, COVENANT, RESTRICTION, OR CONDITION IS STILL IN EFFECT AS OF THE DATE OF THE NOTICE;

(III) CONTAIN THE RECORDING INFORMATION FOR THE ORIGINAL EASEMENT, COVENANT, RESTRICTION, OR CONDITION AND THE RECORDING INFORMATION FOR ANY ASSOCIATED AMENDMENT OR CORRECTIVE DOCUMENT; AND

(IV) STATE THE NAME OF THE FEE SIMPLE OWNER OF THE LAND ENCUMBERED BY THE ORIGINAL EASEMENT, COVENANT, RESTRICTION, OR CONDITION AS OF THE DATE OF THE NOTICE.

(3) A NOTICE RECORDED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE INDEXED AMONG THE LAND RECORDS UNDER THE NAME OF:

(I) THE HOLDER OF THE EASEMENT, COVENANT, RESTRICTION, OR CONDITION; AND

(II) THE FEE SIMPLE OWNER SPECIFIED IN THE NOTICE.

(4) FAILURE TO RECORD A NOTICE IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION DOES NOT IMPAIR THE RIGHTS OR INTERESTS OF THE HOLDERS OF THE EASEMENT, COVENANT, RESTRICTION, OR CONDITION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 18, 2019.