

SENATE BILL 25

N1, M4

9lr0107

(PRE-FILED)

By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Agriculture)**

Requested: October 10, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

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

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 2–118
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2018 Supplement)

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

21 **Article – Real Property**

22 2–118.

23 (a) Any restriction prohibiting or limiting the use of water or land areas, or any
24 improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 this section whether drafted in the form of an easement, covenant, restriction, or condition,
2 creates an incorporeal property interest in the water or land areas, or the improvement or
3 appurtenance thereto, so restricted, which is enforceable in both law and equity in the same
4 manner as an easement or servitude with respect to the water or land areas, or the
5 improvement or appurtenance thereto, if the restriction is executed in compliance with the
6 requirements of this article for the execution of deeds or the Estates and Trusts Article for
7 the execution of wills.

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

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

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

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

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

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

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

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

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

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

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

31 (e) If any grant, reservation, dedication, devise, or gift of any nature which clearly
32 indicates the maker's intention to subject any interest or estate in property to public use
33 for the preservation of agricultural, historic, or environmental qualities fails to specify a
34 grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee,
35 legatee, or beneficiary who is not legally capable of taking the interest or estate, it passes

1 to the Maryland Agricultural Land Preservation Foundation, the Maryland Historical
2 Trust, or the Maryland Environmental Trust in any proceedings under §§ 14–301 and
3 14–302 of the Estates and Trusts Article.

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

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

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

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

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

22 **(G) (1) IF AN EASEMENT, COVENANT, RESTRICTION, OR CONDITION HAS**
23 **BEEN GRANTED, DEVISED, DEDICATED, RESERVED, OR DONATED TO THE**
24 **MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION, THE MARYLAND**
25 **HISTORICAL TRUST, THE MARYLAND ENVIRONMENTAL TRUST, OR THE**
26 **DEPARTMENT OF NATURAL RESOURCES, A NOTICE OF THE EASEMENT, COVENANT,**
27 **RESTRICTION, OR CONDITION MAY BE RECORDED IN THE LAND RECORDS OF THE**
28 **COUNTY IN WHICH THE PROPERTY INTEREST IS LOCATED.**

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

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

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

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

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

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

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

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

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

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