



CARRIED

BILL NO. 55

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

An Act Respecting Community Easements

REPRINTED WITH CHANGES AS RECOMMENDED BY
THE MINISTER OF NATURAL RESOURCES TO
THE LAW AMENDMENTS COMMITTEE

The Honourable Charlie Parker
Minister of Natural Resources

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

An Act Respecting Community Easements

Be it enacted by the Governor and Assembly as follows:

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

2 In this Act,

(a) “community easement” means an easement that meets the purpose of Section 4 subsection 4(2), and includes a recreational-use easement;

(b) “easement holder” means an eligible body under Section 8;

(c) “Minister” means the Minister of Natural Resources;

(d) “municipality” means a regional municipality, municipal unit or village as defined by the *Municipal Government Act*;

(e) “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;

(f) “recreational-use easement” means an easement that is made for the purpose of subsection 4(3).

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.

4 (1) 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; and

(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.~~

~~(e)(2)~~ A community easement other than a recreational-use easement is made for the purpose of

~~(i)(a)~~ conserving or restoring the natural, scenic or open space values of land;

~~(ii)(b)~~ protecting, restoring or enhancing land that contains archaeological, paleontological, historic, or cultural values of land;

~~(iii)~~ preserving, enhancing or managing the access and use of land for outdoor recreation;

~~(iv)(c)~~ conserving, preserving or protecting agricultural land;

~~(v)(d)~~ conserving, preserving or protecting working-forest land;

~~(vi)(e)~~ conserving land comprised of restored or enhanced wetlands including wetlands created for the purpose of compensation;

~~(vii)(f)~~ encouraging the sustainable and responsible use of lands under an easement; or

~~(viii)(g)~~ preserving, conserving, enhancing, or restoring land that meets any other purpose prescribed by the regulations.

(3) A recreational-use easement is made for the purpose of

(a) preserving, enhancing or managing the access and use of land for outdoor recreation; or

(b) creating, maintaining or managing trails for community use.

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.

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.

7 A community easement shall contain

(a) the names and mailing addresses of the parties to the community easement;

(b) the unique parcel identification number that is assigned to a parcel by Service Nova Scotia and Municipal Relations and, for parcels that are not land registered, a metes and bounds description of the land to which the community easement applies;

(c) a sketch or plan that depicts the land to which the community easement relates and, where the community easement applies to only a portion of the parcel, a drawing showing the location of the community easement or the parcel;

(d) where the community easement does not exist in perpetuity, the period for which the community easement is to exist;

(e) the specific purpose for which the community easement is granted;

(f) the practices permitted, restricted or prohibited on the land to which the community easement relates and a description of those practices;

(g) the conservation, preservation, protection, or enhancement practices that may be undertaken by the easement holder; and

(h) any other information prescribed by the regulations.

8 (1) Any of the following bodies is eligible to hold a community easement other than a recreational-use 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 of the thirteen Nova Scotia Mi'kmaw bands or any legal organization representing two or more of the bands;

(e) any non-profit organization designated by the Governor in Council as a conservation organization under the *Conservation Easements Act*;

(f) any other non-profit organization, designated pursuant to the regulations, ~~which that~~ has as one of its primary purposes a purpose listed in ~~clause 4(e)~~ subsection 4(2).

(2) Any of the following bodies is eligible to hold a recreational-use easement:

(a) any of the eligible bodies listed in subsection (1);

(b) any non-profit organization, designated pursuant to the regulations, that has as one of its primary purposes a purpose listed in subsection 4(3).

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

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

11 (1) The easement holder shall submit the community easement and any amendment or assignment of it for filing with the appropriate registry of deeds and shall, within thirty days after filing, forward a copy of the community easement, amendment or assignment to the Minister.

(2) A community easement does not create an interest in land until the community easement is filed pursuant to the *Registry Act* or the *Land Registration Act*.

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.

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~~with the appropriate registry of deeds and send a copy to the Minister.

(3) 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.

(4) Within ninety days after the notice from the Minister has been sent to the eligible bodies pursuant to subsection (3), any eligible body may notify the Minister in writing of its intention to elect to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the community easement.

(5) Where more than one eligible body notifies the Minister pursuant to subsection (4), the Minister shall determine which eligible body will be permitted to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the community easement.

(6) The Minister shall notify the eligible body that is permitted to assume the rights, privileges and obligations of the easement holder pursuant to subsection (4) or (5), and the eligible body shall send the owner a written notice advising the owner of the assumption of obligations, rights and privileges.

(7) Where no eligible body notifies the Minister of its intention 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 (3).

(8) A written notice referred to in subsection (6) or (7) shall be registered ~~in~~with the appropriate registry of deeds.

(9) 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~~with the appropriate registry of deeds and provide a copy of the notice to the owner.

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.

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.

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)~~8(1)(f) or (2)(b);

(c) respecting the information that must be included in a community easement;

(d) modifying the application of this Act to a recreational-use easement;

~~(d)~~(e) defining any word or expression used in but not defined in this Act;

~~(e)~~(f) 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) There may be different regulations made pursuant to subsection (1) for community easements made for different purposes.

~~(2)~~(3) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

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