

25100287D

HOUSE BILL NO. 1721

Offered January 13, 2025

Prefiled January 4, 2025

A *BILL to amend and reenact § 55.1-304 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 55.1 an article numbered 1.1, consisting of sections numbered 55.1-315.1 through 55.1-315.12, relating to Uniform Easement Relocation Act.*

Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-304 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 55.1 an article numbered 1.1, consisting of sections numbered 55.1-315.1 through 55.1-315.12, as follows:

§ 55.1-304. Consensual relocation of easement.

The owner of land that is subject to an easement for the purpose of ingress and egress may relocate the easement, on the servient estate, by recording in the office of the clerk of the circuit court of the county or city in which the easement or any part of such easement is located, a written agreement evidencing the consent of all affected persons and setting forth the new location of the easement. ~~It~~ *For easements created before July 1, 2025, in the absence of such written agreement, the owner of the land that is subject to such easement may seek relocation of the easement on the servient estate upon petition to the circuit court and notice to all parties in interest. The petition shall be granted if, after a hearing held, the court finds that (i) the relocation will not result in economic damage to the parties in interest, (ii) there will be no undue hardship created by the relocation, and (iii) the easement has been in existence for not less than 10 years.*

Article 1.1.

UNIFORM EASEMENT RELOCATION ACT.

§ 55.1-315.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Appurtenant easement" means an easement tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

"Conservation easement" means a nonpossessory property interest created for one or more of the following conservation purposes:

1. Retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological, ecological, or open-space values of real property;

2. Ensuring the availability of real property for agricultural, forest, outdoor-recreational, or open-space uses;

3. Protecting natural resources, including wetlands, grasslands, and riparian areas;

4. Maintaining or enhancing air or water quality;

5. Preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property; or

6. Any other purpose under Title 10.1.

"Dominant estate" means an estate or interest in real property benefited by an appurtenant easement.

"Easement" means a nonpossessory property interest that:

1. Provides a right to enter, use, or enjoy real property owned by or in the possession of another; and

2. Imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

"Easement holder" means:

1. In the case of an appurtenant easement, the dominant estate owner; or

2. In the case of an easement in gross, public utility easement, conservation easement, or negative easement, the grantee of the easement or a successor.

"Easement in gross" means an easement not tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

"Lessee of record" means a person holding a lessee's interest under a recorded lease or memorandum of lease.

"Negative easement" means a nonpossessory property interest whose primary purpose is to impose on a servient estate owner a duty not to engage in a specified use of the estate.

"Person" has the same meaning as provided in § 8.01-2.

59 *"Public utility easement" means a nonpossessory property interest in which the easement holder is a*
60 *publicly regulated or publicly owned utility under federal law or law of the Commonwealth or a municipality.*
61 *"Public utility easement" includes an easement benefiting an intrastate utility, an interstate utility, or a utility*
62 *cooperative.*

63 *"Real property" means an estate or interest in, over, or under land, including structures, fixtures, and*
64 *other things that by custom, usage, or law pass with a conveyance of land whether or not described or*
65 *mentioned in the contract of sale or instrument of conveyance. "Real property" includes the interest of a*
66 *lessor and lessee and, unless the interest is personal property under law of the Commonwealth other than this*
67 *article, an interest in a common-interest community.*

68 *"Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in*
69 *an electronic or other medium and is retrievable in perceivable form.*

70 *"Security instrument" means a mortgage, deed of trust, security deed, contract for deed, lease, or other*
71 *record that creates or provides for an interest in real property to secure payment or performance of an*
72 *obligation, whether by acquisition or retention of a lien, a lessor's interest under a lease, or title to the real*
73 *property. "Security instrument" includes:*

- 74 1. *A security instrument that also creates or provides for a security interest in personal property;*
- 75 2. *A modification or amendment of a security instrument; and*
- 76 3. *A record creating a lien on real property to secure an obligation under a covenant running with the*
77 *real property or owed by a unit owner to a common-interest community association.*

78 *"Security-interest holder of record" means a person holding an interest in real property created by a*
79 *recorded security instrument.*

80 *"Servient estate" means an estate or interest in real property that is burdened by an easement.*

81 *"Title evidence" means a title insurance policy, preliminary title report or binder, title insurance*
82 *commitment, abstract of title, attorney's opinion of title based on examination of public records or an*
83 *abstract of title, or any other means of reporting the state of title to real property that is customary in the*
84 *locality.*

85 *"Unit" means a physical portion of a common-interest community designated for separate ownership or*
86 *occupancy with boundaries described in a declaration establishing the common-interest community.*

87 *"Utility cooperative" means a nonprofit entity whose purpose is to deliver a utility service, such as*
88 *electricity, oil, natural gas, water, sanitary sewer, storm water, or telecommunications, to its customers or*
89 *members and includes an electric cooperative, rural electric cooperative, rural water district, and rural*
90 *water association.*

91 **§ 55.1-315.2. Scope; exclusions.**

92 *A. Except as otherwise provided in subsection B, this article applies to an easement established by express*
93 *grant or reservation or by prescription, implication, necessity, estoppel, or other method.*

94 *B. This article may not be used to relocate:*

- 95 1. *A public utility easement, conservation easement, or negative easement; or*
- 96 2. *An easement if the proposed location would encroach on an area of an estate burdened by a*
97 *conservation easement or would interfere with the use or enjoyment of a public utility easement or an*
98 *easement appurtenant to a conservation easement.*

99 *C. This article does not apply to relocation of an easement by consent.*

100 **§ 55.1-315.3. Right of servient estate owner to relocate.**

101 *A servient estate owner may relocate an easement under this article only if the relocation does not*
102 *materially:*

- 103 1. *Lessen the utility of the easement;*
- 104 2. *After the relocation, increase the burden on the easement holder in its reasonable use and enjoyment of*
105 *the easement;*
- 106 3. *Impair an affirmative, easement-related purpose for which the easement was created;*
- 107 4. *During or after the relocation, impair the safety of the easement holder or another entitled to use and*
108 *enjoy the easement;*
- 109 5. *During the relocation, disrupt the use and enjoyment of the easement by the easement holder or*
110 *another entitled to use and enjoy the easement, unless the servient estate owner substantially mitigates the*
111 *duration and nature of the disruption;*

112 6. *Impair the physical condition, use, or value of the dominant estate or improvements on the dominant*
113 *estate; or*

114 7. *Impair the value of the collateral of a security-interest holder of record in the servient estate or*
115 *dominant estate, impair a real-property interest of a lessee of record in the dominant estate, or impair a*
116 *recorded real-property interest of any other person in the servient estate or dominant estate.*

117 **§ 55.1-315.4. Commencement of civil action.**

118 *A. To obtain an order to relocate an easement under this article, a servient estate owner shall commence*
119 *a civil action.*

120 *B. A servient estate owner that commences a civil action under subsection A:*

121 1. Shall serve a summons and petition on:

122 a. The easement holder whose easement is the subject of the relocation;

123 b. A security-interest holder of record of an interest in the servient estate or dominant estate;

124 c. A lessee of record of an interest in the dominant estate; and

125 d. Except as otherwise provided in subdivision 2, any other owner of a recorded real-property interest if

126 the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest;

127 and

128 2. Is not required to serve a summons and petition on the owner of a recorded real-property interest in

129 oil, gas, or minerals unless the interest includes an easement to facilitate oil, gas, or mineral development.

130 C. A petition under this section shall state:

131 1. The intent of the servient estate owner to seek the relocation;

132 2. The nature, extent, and anticipated dates of commencement and completion of the proposed relocation;

133 3. The current and proposed locations of the easement;

134 4. The reason the easement is eligible for relocation under § 55.1-315.2;

135 5. The reason the proposed relocation satisfies the conditions for relocation under § 55.1-315.3; and

136 6. That the servient estate owner has made a reasonable attempt to notify the holders of any public utility

137 easement, conservation easement, or negative easement on the servient estate or dominant estate of the

138 proposed relocation.

139 D. At any time before the court renders a final order in an action under subsection A, a person served

140 under subdivision B 1 b, c, or d may file a document, in recordable form, that waives its rights to contest or

141 obtain relief in connection with the relocation or subordinates its interests to the relocation. On filing of the

142 document, the court may order that the person is not required to answer or participate further in the action.

143 **§ 55.1-315.5. Required findings; order.**

144 A. The court may not approve relocation of an easement under this article unless the servient estate

145 owner:

146 1. Establishes that the easement is eligible for relocation under § 55.1-315.2; and

147 2. Satisfies the conditions for relocation under § 55.1-315.3.

148 B. An order under this article approving relocation of an easement shall:

149 1. State that the order is issued in accordance with this article;

150 2. Recite the recording data of the instrument creating the easement, if any, and any amendments;

151 3. Identify the immediately preceding location of the easement;

152 4. Describe in a legally sufficient manner the new location of the easement;

153 5. Describe mitigation required of the servient estate owner during relocation;

154 6. Refer in detail to the plans and specifications of improvements necessary for the easement holder to

155 enter, use, and enjoy the easement in the new location;

156 7. Specify conditions to be satisfied by the servient estate owner to relocate the easement and construct

157 improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

158 8. Include a provision for payment by the servient estate owner of expenses under § 55.1-315.6;

159 9. Include a provision for compliance by the parties with the obligation of good faith under § 55.1-315.7;

160 and

161 10. Instruct the servient estate owner to record an affidavit, if required under subsection A of §

162 55.1-315.8, when the servient estate owner substantially completes relocation.

163 C. An order under subsection B may include any other provision consistent with this article for the fair

164 and equitable relocation of the easement.

165 D. Before a servient estate owner proceeds with relocation of an easement under this article, the owner

166 shall record, in the land records of each jurisdiction where the servient estate is located, a certified copy of

167 the order under subsection B.

168 **§ 55.1-315.6. Expenses of relocation.**

169 A servient estate owner is responsible for reasonable expenses of relocation of an easement under this

170 article, including the expense of:

171 1. Constructing improvements on the servient estate or dominant estate in accordance with an order

172 under § 55.1-315.5;

173 2. During the relocation, mitigating disruption in the use and enjoyment of the easement by the easement

174 holder or another person entitled to use and enjoy the easement;

175 3. Obtaining a governmental approval or permit to relocate the easement and construct necessary

176 improvements;

177 4. Preparing and recording the certified copy required by subsection D of § 55.1-315.5 and any other

178 document required to be recorded;

179 5. Obtaining any title work required to complete the relocation or required by a party to the civil action

180 as a result of the relocation;

181 6. Purchasing applicable premiums for title insurance related to the relocation;

182 7. Engaging the services of any expert necessary to review plans and specifications for an improvement to

183 *be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans*
184 *and specifications referred to in the order under subdivision B 6 of § 55.1-315.5;*

185 8. *Paying any maintenance cost associated with the relocated easement that is greater than the*
186 *maintenance cost associated with the easement before relocation; and*

187 9. *Obtaining any third-party consent required to relocate the easement.*

188 **§ 55.1-315.7. Duty to act in good faith.**

189 *After the court, pursuant to § 55.1-315.5, approves relocation of an easement and the servient estate*
190 *owner commences the relocation, the servient estate owner, the easement holder, and other parties in the*
191 *civil action shall act in good faith to facilitate the relocation in compliance with this article.*

192 **§ 55.1-315.8. Relocation affidavit.**

193 A. *If an order under § 55.1-315.5 requires the construction of an improvement as a condition for*
194 *relocation of an easement, relocation is substantially complete, and the easement holder is able to enter, use,*
195 *and enjoy the easement in the new location, the servient estate owner shall:*

196 1. *Record, in the land records of each jurisdiction where the servient estate is located, an affidavit*
197 *certifying that the easement has been relocated; and*

198 2. *Send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil*
199 *action.*

200 B. *Until an affidavit under subsection A is recorded and sent, the easement holder may enter, use, and*
201 *enjoy the easement in the current location, subject to the court's order under § 55.1-315.5 approving*
202 *relocation.*

203 C. *If an order under § 55.1-315.5 does not require an improvement to be constructed as a condition of the*
204 *relocation, recording the order under subsection D of § 55.1-315.5 constitutes relocation.*

205 **§ 55.1-315.9. Limited effect of relocation.**

206 A. *Relocation of an easement under this article:*

207 1. *Is not a new transfer or a new grant of an interest in the servient estate or the dominant estate;*

208 2. *Is not a breach or default of, and does not trigger, a due-on-sale clause or other transfer-restriction*
209 *clause under a security instrument, except as otherwise determined by a court under law other than this*
210 *article;*

211 3. *Is not a breach or default of a lease, except as otherwise determined by a court under law other than*
212 *this article;*

213 4. *Is not a breach or default by the servient estate owner of a recorded document affected by the*
214 *relocation, except as otherwise determined by a court under law other than this article;*

215 5. *Does not affect the priority of the easement with respect to other recorded real-property interests*
216 *burdening the area of the servient estate where the easement was located before the relocation; and*

217 6. *Is not a fraudulent conveyance or voidable transaction under law.*

218 B. *This article does not affect any other method of relocating an easement permitted under law of the*
219 *Commonwealth other than this article.*

220 **§ 55.1-315.10. Non-waiver.**

221 *The right of a servient estate owner to relocate an easement under this article shall not be waived,*
222 *excluded, or restricted by agreement even if:*

223 1. *The instrument creating the easement prohibits relocation or contains a waiver, exclusion, or*
224 *restriction of this article;*

225 2. *The instrument creating the easement requires consent of the easement holder to amend the terms of the*
226 *easement; or*

227 3. *The location of the easement is fixed by the instrument creating the easement, another agreement,*
228 *previous conduct, acquiescence, estoppel, or implication.*

229 **§ 55.1-315.11. Uniformity of application and construction.**

230 *In applying and construing this uniform act, consideration shall be given to the need to promote*
231 *uniformity of the law with respect to its subject matter among the states that enact it.*

232 **§ 55.1-315.12. Relation to Electronic Signatures in Global and National Commerce Act.**

233 *This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce*
234 *Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. §*
235 *7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. §*
236 *7003(b).*

237 **2. That the provisions of this act apply to an easement created on or after July 1, 2025.**