

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 55.1-304 of the Code of Virginia, relating to relocation or modification of easement by owner of servient estate.

[H 252]

Approved

**Be it enacted by the General Assembly of Virginia:**  
**1. That § 55.1-304 of the Code of Virginia is amended and reenacted as follows:**  
**§ 55.1-304. Relocation or modification of easement.**

~~The owner of land that is subject to an~~ A. For the purposes of this section:  
"Dominant estate" means an estate or interest in real property benefitted by an appurtenant easement.  
"Easement holder" means (i) in the case of an appurtenant easement, the dominant estate owner or (ii) in the case of an easement in gross, the grantee of the easement or a successor.  
"Public entity" means (i) the United States; (ii) an agency of the United States; (iii) the Commonwealth; or (iv) an agency, institution, authority, or political subdivision of the Commonwealth.  
"Servient estate" means an estate or interest in real property that is burdened by an easement.  
B. Any easement ~~for the purpose of ingress and egress~~ may ~~relocate the easement, on the servient estate,~~ be relocated or modified by consent by recording in the office of the clerk of the circuit court of the each county or city in which the easement or any part of ~~such~~ the easement is located; a written agreement evidencing the easement holder's consent and the consent of all other affected persons as may be required, such as trustees and beneficiaries of deeds of trust encumbering the dominant or servient estates, and setting forth the new location or modification of the easement.  
C. In the absence of such written agreement, the ~~owner of the land that is subject to such~~ easement servient estate may seek relocation or modification 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 proper notice and 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~~ relocation or modification of the easement does not materially (i) lessen the utility of the easement; (ii) after the relocation or modification, increase the burden on the easement holder in its reasonable use and enjoyment of the easement; (iii) impair an affirmative, easement-related purpose for which the easement was established; (iv) during or after the relocation or modification, impair the safety of anyone entitled to use the easement; (v) during the relocation or modification, disrupt the use and enjoyment of the easement by the easement holder or another entitled to use and enjoy the easement, unless the owner of the servient estate substantially mitigates the duration and nature of the disruption; or (vi) impair the value, use, or physical condition of the land benefitted by the easement. The owner of the servient estate shall pay all costs, except attorney fees, to relocate or modify the easement.  
D. The provisions of subsection C apply to an easement established by express grant or reservation, including reciprocal easements, or by prescription, implication, necessity, estoppel, or other method, but may not be used to relocate or modify (i) a public service corporation easement or any facility operated by a public service corporation; (ii) a public utility easement or public utility facility, whether publicly or privately owned; (iii) a conservation easement as defined in § 10.1-1009 or open-space easement as defined in § 10.1-1700; (iv) an easement appurtenant to a conservation easement as defined in § 10.1-1009 or open-space easement as defined in § 10.1-1700; (v) a telecommunications easement; (vi) an easement held by a public entity; or (vii) any easement if the proposed location would interfere with the use or enjoyment of those easements listed in clauses (i) through (vii).