REFERENCE TITLE: temporary open space; taxation

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1458

Introduced by
Senator Griffin

AN ACT

AMENDING SECTIONS 33-272, 33-274 AND 33-276, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-277; AMENDING SECTION 42-12004, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-12058; RELATING TO CONSERVATION EASEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-272, Arizona Revised Statutes, is amended to read:

33-272. Creation, conveyance, acceptance and duration

A. Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements. For purposes of this article, conservation easements shall be voluntarily created and shall not be required by a political subdivision or governmental entity. This article neither limits nor enlarges the power or purposes of eminent domain, zoning, subdivision regulations or any right of condemnation under the laws of this state. Any assignment, release, modification, termination or other document altering or affecting a conservation easement need only be executed or approved in writing by the current owner of the real property ~~which~~ THAT is burdened by the conservation easement, the holder of the conservation easement and any governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement.

B. No right or duty in favor of or against a holder and no right in favor of a governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

~~C. Except as provided in section 33-273, subsection B, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.~~

C. A CONSERVATION EASEMENT IS UNLIMITED IN DURATION EXCEPT AS PROVIDED IN SECTION 33-273, SUBSECTION B AND SECTION 33-277.

D. An interest in real property in existence at the time the conservation easement is created is not impaired by a conservation easement unless the owner of the interest is a party to the conservation easement or consents in writing to the conservation easement by an instrument acknowledged and recorded in the office of the county recorder of the county in which the affected real property is located.

Sec. 2. Section 33-274, Arizona Revised Statutes, is amended to read:

33-274. Validity and assignment of conservation easements

A. A conservation easement, or any assignment, release, modification, termination or other document altering or affecting a conservation easement, is only valid if recorded with the county recorder of the county in which any portion of the real property burdened by the conservation easement is located.

B. FROM AND AFTER DECEMBER 31, 2016, THE CREATOR OF A TEMPORARY OPEN SPACE EASEMENT PURSUANT TO SECTION 33-277, OR THE SELLER OR ASSIGNOR OF REAL PROPERTY BURDENED BY A TEMPORARY OPEN SPACE EASEMENT, SHALL FILE A NOTICE OF

THE ACTION WITH THE COUNTY ASSESSOR OF EACH COUNTY IN WHICH ANY PORTION OF THE REAL PROPERTY BURDENED BY THE EASEMENT IS LOCATED.

~~B.~~ C. Third party rights of enforcement granted through a conservation easement to a governmental body, charitable corporation or trustee of a charitable trust may not be assigned, except with the prior written consent of the holder of the conservation easement.

~~C.~~ D. A conservation easement is valid even though:

1. It is not appurtenant to an interest in real property.

2. It can be or has been assigned to another holder.

3. It is not of a character that has been recognized traditionally at common law.

4. It imposes a negative burden.

5. It imposes affirmative obligations on the owner of an interest in the burdened property or on the holder.

6. The benefit does not touch or concern real property.

7. There is no privity of estate or of contract.

Sec. 3. Section 33-276, Arizona Revised Statutes, is amended to read:

33-276. Applicability

A. EXCEPT AS PROVIDED BY SECTION 33-277, this article applies to any interest created after ~~its effective date which~~ AUGUST 7, 1985 THAT complies with this article, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

B. This article does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under any other law of this state.

Sec. 4. Title 33, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 33-277, to read:

33-277. Temporary open space easements

A. AN OWNER OF REAL PROPERTY MAY CREATE A TEMPORARY OPEN SPACE EASEMENT AS PROVIDED BY THIS ARTICLE. AN INSTRUMENT CREATING A TEMPORARY OPEN SPACE EASEMENT FROM AND AFTER DECEMBER 31, 2016 MUST STATE:

1. THAT THE EASEMENT IS TEMPORARY.

2. THE TERM OF ITS DURATION, WHICH MUST BE AT LEAST TEN YEARS.

3. WHETHER, AND THE CONDITIONS UNDER WHICH, THE TERM MAY BE RENEWED.

B. EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS OF THIS ARTICLE APPLY TO A TEMPORARY OPEN SPACE EASEMENT.

C. REAL PROPERTY THAT IS BURDENED BY A TEMPORARY OPEN SPACE EASEMENT IS SUBJECT TO ASSESSMENT AND TAXATION AS CLASS FOUR PROPERTY PURSUANT TO SECTION 42-12004 BASED ON THE CURRENT FULL CASH VALUE OF THE PROPERTY SUBJECT TO THE EASEMENT.

Sec. 5. Section 42-12004, Arizona Revised Statutes, is amended to read:

42-12004. Class four property

A. For purposes of taxation, class four is established consisting of:

1. Real and personal property and improvements to the property that are used for residential purposes, including residential property that is owned in foreclosure by a financial institution, that is not otherwise included in another classification and that is valued at full cash value. The homesite that is included in class four may include:

(a) Up to ten acres on a single parcel of real property on which the residential improvement is located.

(b) More than ten, but not more than forty, acres on a single parcel of real property on which the residential improvement is located if it is zoned exclusively for residential purposes or contains legal restrictions or physical conditions that prevent the division of the parcel. For the purposes of this subdivision, "physical conditions" means topography, mountains, washes, rivers, roads or any other configuration that limits the residential usable land area.

2. Real and personal property and improvements to the property that are used solely as leased or rented property for residential purposes, that are not included in class one, two, three, six, seven or eight and that are valued at full cash value.

3. Child care facilities that are licensed under title 36, chapter 7.1 and that are valued at full cash value.

4. Real and personal property and improvements to property that are used to operate nonprofit residential housing facilities that are structured to house or care for persons with disabilities or who are sixty-two years of age or older and that are valued at full cash value.

5. Real and personal property and improvements that are used to operate licensed residential care institutions or licensed nursing care institutions that provide medical services, nursing services or health related services and that are structured to house or care for persons with disabilities or who are sixty-two years of age or older and that are valued at full cash value.

6. Real and personal property consisting of no more than eight rooms of residential property that are leased or rented to transient lodgers, together with furnishing no more than a breakfast meal, by the owner who resides on the property and that is valued at full cash value.

7. Real and personal property consisting of residential dwellings that are maintained for occupancy by agricultural employees as a condition of employment or as a convenience to the employer, that is not included in class three and that is valued at full cash value. The land associated with these dwellings shall be valued as agricultural land pursuant to chapter 13, article 3 of this title.

8. Real property and improvements to property constituting common areas that are valued pursuant to chapter 13, article 9 of this title.

9. Real and personal property that is defined as timeshare property by section 32-2197 and valued pursuant to chapter 13, article 10 of this title,

except for any property used for commercial, industrial or transient occupancy purposes and included in class one to the extent of that use.

10. REAL PROPERTY THAT IS SUBJECT TO A TEMPORARY OPEN SPACE EASEMENT PURSUANT TO TITLE 33, CHAPTER 2, ARTICLE 4, VALUED AT THE FULL CASH VALUE OF THE PROPERTY AS BURDENED BY THE TEMPORARY CONSERVATION EASEMENT.

B. Subsection A, paragraphs 4 and 5 of this section shall not be construed to limit eligibility for exemption from taxation under chapter 11, article 3 of this title.

Sec. 6. Title 42, chapter 12, article 2, Arizona Revised Statutes, is amended by adding section 42-12058, to read:

42-12058. Verification of temporary open space easement; recapture penalty for failure to renew

A. THE CLASSIFICATION OF REAL PROPERTY THAT IS SUBJECT TO A TEMPORARY OPEN SPACE EASEMENT AS CLASS FOUR PURSUANT TO SECTION 42-12004, SUBSECTION A, PARAGRAPH 10 CONSTITUTES AN ACCEPTANCE BY THE COUNTY ASSESSOR OF A COVENANT BY THE OWNER OF THE PROPERTY THAT THE USE OF THE PROPERTY WILL REMAIN UNCHANGED DURING THE TERM OF THE EASEMENT AND THAT THE EASEMENT WILL BE RENEWED AT THE END OF ITS CURRENT TERM.

B. IF THE ASSESSOR HAS REASON TO BELIEVE THAT THE PROPERTY IS NOT BEING USED IN A MANNER CONSISTENT WITH A CONSERVATION EASEMENT OR THAT THE TEMPORARY OPEN SPACE EASEMENT HAS EXPIRED WITHOUT RENEWAL, THE ASSESSOR SHALL NOTIFY THE OWNER AND REQUEST THAT THE OWNER RESPOND AS TO WHETHER THE REAL PROPERTY IS STILL BURDENED BY THE TEMPORARY OPEN SPACE EASEMENT. IF THE OWNER FAILS TO RESPOND TO THE ASSESSOR WITHIN THIRTY DAYS AFTER THE NOTICE IS MAILED, THE ASSESSOR SHALL MAIL THE OWNER A FINAL NOTICE WITHIN THIRTY DAYS REQUESTING THAT THE OWNER PROVIDE INFORMATION AS TO WHETHER OR NOT THE PROPERTY IS STILL BURDENED BY THE TEMPORARY OPEN SPACE EASEMENT. IF THE OWNER FAILS TO RESPOND TO THE ASSESSOR WITHIN FIFTEEN DAYS AFTER THE FINAL NOTICE IS MAILED, THE ASSESSOR SHALL DO BOTH OF THE FOLLOWING:

1. RECLASSIFY THE PROPERTY AS CLASS TWO UNLESS THE ASSESSOR HAS EVIDENCE THAT ANOTHER CLASSIFICATION IS WARRANTED. IN ADDITION TO OTHER APPEAL PROCEDURES PROVIDED BY LAW, THE OWNER OF THE PROPERTY THAT IS RECLASSIFIED UNDER THIS PARAGRAPH MAY APPEAL THE RECLASSIFICATION TO THE COUNTY BOARD OF SUPERVISORS WITHIN THIRTY DAYS AFTER THE NOTICE OF CLASSIFICATION IS MAILED. IF THE OWNER PROVES TO THE BOARD'S SATISFACTION THAT THE PROPERTY REMAINS BURDENED BY THE TEMPORARY OPEN SPACE EASEMENT OR A RENEWAL OF THE EASEMENT, THE BOARD SHALL ORDER THE PROPERTY TO BE RECLASSIFIED AS CLASS FOUR PROPERTY PURSUANT TO SECTION 42-12004, SUBSECTION A, PARAGRAPH 10.

2. NOTIFY THE COUNTY TREASURER WHO SHALL ASSESS A CIVIL PENALTY AGAINST THE PROPERTY EQUAL TO ONE-HALF OF THE AMOUNT OF AD VALOREM PROPERTY TAXES THAT WOULD HAVE BEEN ASSESSED BY ALL TAXING JURISDICTIONS IF THE PROPERTY HAD BEEN CLASSIFIED AS CLASS TWO FOR THE FINAL ONE-HALF, BUT NOT MORE THAN TEN, OF THE TAX YEARS THAT HAVE ELAPSED SINCE THE TEMPORARY OPEN SPACE EASEMENT WAS CREATED OR LAST RENEWED, WHICHEVER IS LATER. THE PENALTY

SHALL NOT BE ASSESSED IF THE OWNERSHIP OF THE PROPERTY HAS CHANGED AFTER NOTIFICATION EXCEPT FOR A SALE OF THE PROPERTY FOR DELINQUENT TAXES. THE OWNER OF THE PROPERTY SHALL PAY THE PENALTY UNDER THIS PARAGRAPH TO THE COUNTY TREASURER WITHIN THIRTY DAYS AFTER THE NOTICE OF THE PENALTY IS MAILED. THE OWNER MAY APPEAL THE PENALTY TO THE COUNTY BOARD OF SUPERVISORS WITHIN THE TIME REQUIRED FOR PAYMENT. IF THE OWNER PROVES TO THE BOARD'S SATISFACTION THAT THE PROPERTY REMAINS BURDENED BY THE TEMPORARY OPEN SPACE EASEMENT OR A RENEWAL OF THE EASEMENT, THE BOARD SHALL WAIVE THE PENALTY AND THE PROPERTY SHALL BE LISTED AS CLASS FOUR PURSUANT TO SECTION 42-12004, SUBSECTION A, PARAGRAPH 10. UNTIL PAID OR WAIVED, THE PENALTY CONSTITUTES A LIEN AGAINST THE PROPERTY. THE COUNTY TREASURER SHALL DISTRIBUTE ALL REVENUE COLLECTED AS PENALTIES UNDER THIS PARAGRAPH AMONG THE VARIOUS TAXING JURISDICTIONS ACCORDING TO THEIR PROPORTIONATE TAX RATES APPLYING TO THE PROPERTY DURING THE TAX YEARS FOR WHICH THE PENALTY IS ASSESSED.