

H.580 – Conservation Easements

In 2010, the provisions in H.580 were initially recommended by the Vermont Land Trust, following national research about the effectiveness of conservation easements. They were included in draft legislation (S.119) that passed the Senate in 2013. Neither provision of H.580 was controversial in S.119.

H.580 does 2 things:

1. A tax lien shall not affect conservation rights and interests if the tax lien attaches to the subject property subsequent to the recording of the conservation rights and interests in the municipal land records.

- This subsection clarifies that an easement is not extinguished by a tax sale, if the easement went into effect before a tax lien is filed. Prior tax liens would not be affected, and are normally discharged at the time an easement is filed.
- *Example: A land trust uses grants to purchase a conservation easement. Years later, the landowner gets delinquent on his/her taxes and the town files a tax lien and ends up taking the property for sale. Under current law, the town's claim on the property value could take precedence over the easement that the grants paid for. This legislative change clarifies that if a land trust acquires an easement on property where the taxes are paid up current; the town can't later undo the easement.*

2. Conservation rights shall not be subject to the requirement to file a notice of claim within a 40-year period.

- Since title searches in Vermont need only look back 40 years, there has been a possibility that easements recorded prior to this period could be missed in title searches, and therefore may not be understood as encumbrances when some properties are transferred.
 - A legislatively created Working Group in 2012 looked into this issue and recommended that conservation easements be exempted from Vermont's 40-year re-recording requirement.
 - In Vermont, other types of easements need not be re-recorded, nor do any of our neighboring states have such a requirement.
- By making this change, we ensure that conservation easements will not be inadvertently terminated in the event they are not re-recorded and we avoid great costs to Vermont's easement holders and the public investment in such easements.
- *Example: In 1980 a landowner conveys a conservation easement to a land trust and the land trust records the conservation easement in the town's land records. The landowner conveys the conserved property in 2021 and the buyer claims that the property is no longer encumbered by the conservation easement because the land trust did not record the conservation easement. The legislative change eliminates the risk that the conservation easement, which is intended to protect the property forever, is lost.*