CHAPTER 47-05
SERVITUDES

47-05-01. Easements attached to other lands.

The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. The right of way.
4. The right of taking water, wood, minerals, and other things.
5. The right of transacting business upon land.
6. The right of conducting lawful sports upon land.
7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
8. The right of receiving water from or discharging the same upon land.
9. The right of flooding land.
10. The right of having water flow without diminution or disturbance of any kind.
11. The right of using a wall as a party wall.
12. The right of receiving more than natural support from adjacent land or things affixed thereto.
13. The right of having the whole of a division fence maintained by a coterminous owner.
14. The right of having public conveyances stopped or of stopping the same on land.
15. The right of a seat in church.
16. The right of burial.

47-05-01.1. Solar easement - Creation.

Any easement obtained for the purpose of exposure of a solar energy device to the direct rays of the sun shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements. The term "solar energy device" means the device, mechanism, or apparatus designed to receive the direct rays of the sun and convert those rays into heat, electrical, or other form of energy for the purpose of providing heating, cooling, or electrical power.

47-05-01.2. Solar easement - Contents.

Any instrument creating a solar easement shall include, but shall not be limited to, all of the following:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.
2. Any terms, conditions, or both under which the solar easement is granted or will be terminated.
3. Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

47-05-02. Servitudes not attached to land.

The following land burdens or servitudes upon land may be granted and held, though not attached to land:

1. The right to pasture, and of fishing.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals, or other things.

7. A historic easement granted with respect to a state historic site and buildings and structures thereon, or property listed in the national register of historic places, in accordance with the provisions of section 55-10-08.

47-05-02.1. Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property.

Real property easements, servitudes, or any nonappurtenant restrictions on the use of real property, which become binding after July 1, 1977, shall be subject to the requirements of this section. These requirements are deemed a part of any agreement for such interests in real property whether or not printed in a document of agreement.

1. The area of land covered by the easement, servitude, or nonappurtenant restriction on the use of real property shall be properly described and shall set out the area of land covered by the interest in real property.
2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property must be specifically set out, and in no case may the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. A waterfowl production area easement that exceeds fifty years or which purports to be perpetual may be extended by negotiation between the owner of the easement and the owner of the servient tenement. A waterfowl production area easement that exceeds fifty years or which purports to be permanent and is not extended by negotiation is void. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.
3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

47-05-03. Dominant tenement defined.

A dominant tenement means the land to which an easement is attached.

47-05-04. Servient tenement defined.

A servient tenement means the land upon which a burden or servitude has been placed.

47-05-05. Servitude - Creation.

A servitude can be created only by one who has a vested estate in the servient tenement.

47-05-06. Holding of servitude.

A servitude thereon cannot be held by the owner of the servient tenement.

47-05-07. Servitude - Extent.

The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

47-05-08. Partition of dominant tenement - Burden apportioned - Limitations.

In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

47-05-09. Right of future owner in easements.

The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easement, although such tenement is occupied by a tenant.

47-05-10. Enforcement of easement - Right of action.

The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

47-05-11. Public servitude - Effect on owner of fee - Action for possession.

The owner in fee of a servient tenement may maintain an action for the possession of the land against anyone unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

47-05-12. Extinguishment of servitude - Methods.

A servitude is extinguished:

1. By vesting of the right to the servitude and the right to the servient tenement in the same person;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement by the owner of the servitude or with the owner's assent if it is incompatible with its nature or exercise; or
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by prescription.

47-05-13. Restrictions on easements for forest purposes.

Notwithstanding any other provision of law, a person may not create, convey, or record any easement, servitude, or nonappurtenant restriction on the use of real property within thirty-three feet [10.06 meters] of the centerline of any section line if the purpose of that easement, servitude, or restriction is to retain or protect forests.

47-05-14. Wind easement - Definition.

Redesignated as section 17-04-02 under S.L. 2007, ch. 204, § 5.

47-05-15. Wind easements - Creation - Term - Development required.

Redesignated as section 17-04-03 under S.L. 2007, ch. 204, § 5.

47-05-16. Severance of wind energy rights limited.

Redesignated as section 17-04-04 under S.L. 2007, ch. 204, § 5.

47-05-17. Severance of the right of access for hunting access prohibited.

The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded or executed before August 1, 2007.