

# In Rem Right of Conservation

*On 25 June 2016, Law N°20,930 was published, that creates the In Rem Right of Conservation (Derecho Real de Conservación) Chile adapted the model of the conservation easement that exists in other countries, notably the US, and adjusted it to our national reality and Civil Code to promote the participation of the private sector to conserve the environmental value of their properties, or certain natural attributes and features of them.*

The concept is as follows: the landowner voluntarily constitutes an In Rem Right of Conservation that is conferred for the benefit of a natural or legal person, whether public or private, and establishes certain conditions or restrictions to the real estate to enhance the conservation of its environmental heritage. It is transferable, cannot be embargoed, indivisible and “runs with the land” to bind future owners and generations. It may be constituted over the entire real estate title or a certain portion thereof, allowing for different activities, compatible with conservation, to take place on different portions of the property. Its duration is indefini-

te, unless otherwise expressly agreed by the parties.

Practically speaking, the In Rem Right of Environmental Conservation is constituted by a contract that is signed by a public deed before a Notary Public and registered in the Mortgages and Encumbrances Registry of the respective Real Estate Registry, date upon which it produces legal effects.

Conversely, the In Rem Right of Conservation allows economic transactions for eco-friendly services that the environment provides to society. In this sense, the In Rem Right of Conservation allows interested parties

the opportunity to conserve the environmental heritage of a place, because they have a scientific or pharmaceutical interest in the natural species or resources of that specific area. One can establish an agreement with a landowner in order to commit to protecting their land in exchange for an amount agreed upon by both parties.

In this way, the In Rem Right of Conservation constitutes a substantial change in Chilean legislation, granting a new legal tool for the promotion and protection of the environment.

Finally, as regards the extinguishment or termination of the in rem right of conservation, the Law indicates a general cause and various specific causes of termination:

1. For the general causes of termination of in rem rights (eg. destruction of the thing); and,
2. For causes specific to the in rem right of conservation:

- a. The transfer of the encumbered property, when this transfer arises from the foreclosure of a preferential mortgage and under specific conditions described in the Law;

- b. The dissolution of the entity that benefits from the in rem right, unless the parties have stipulated otherwise;

- c. The expropriation by the State of the encumbered property, whether partially (in which case the right remains over that portion of the property that is not expropriated) or fully.

*The In Rem Right of Conservation must include at least one of these prohibitions, restrictions or obligations:*

- *Restriction or prohibition to allocate the real estate to one or more purposes eg. real estate, commercial, tourism, industrial, agricultural, forestry or other exploitative purposes.*
- *Obligation to take responsibility for or contract services for the maintenance, cleaning, decontamination, repair, protection, administration, and rational use of the real estate.*
- *Obligation to carry out or supervise a management plan in accordance with the constitutive contract, with attention to the natural resources of the real estate, within the framework of sustainable use thereof.*

*In addition, the parties may fix limits to monetary amounts in relation to the different obligations that are agreed upon, as well as different terms for the fulfillment of different restrictions or prohibitions.*

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