**State-of-the Art: Conservation Easement Enabling Statutes**

by

Nancy A. McLaughlin

Robert W. Swenson Professor of Law

University of Utah S.J. Quinney College of Law

nancy.mclaughlin@law.utah

To remove the common law impediments to the validity and enforcement of conservation easements, which are generally held in gross, all fifty states have adopted some form of conservation easement “enabling” statute. These statutes are now decades old and their terms vary significantly. Some of the statutes fail to address key issues, some do so in inappropriate ways, and some contain innovative provisions that help to safeguard conservation easements and the conservation values they protect. At the same time, the use of conservation easements as land protection tools has exploded, often outpacing other methods of protection, such as fee title acquisition or regulation. Billions of dollars of public funds are invested in conservation easements annually through tax-incentive and easement purchase programs. This article examines the enabling statutes, focusing on the inappropriate as well as innovative provisions. The goal is to provide policymakers with a roadmap for updating these statutes to ensure they will protect the public interest and enormous public investment in these critically important conservation instruments.