

What is a Conservation Easement?

Conservation easements may apply to a variety of resources. Broadly applied, a conservation easement is a legal agreement a property owner makes with a nonprofit Land Trust or government organization to protect cultural and natural resources on his/her property. A property owner holds a certain number of rights, such as the right to subdivide his/her land, restrict its access, or construct a building on it. By agreeing to place property under a conservation easement, the property owner, or "grantor," agrees to donate, lease, or sell some or all of these rights to a nonprofit Land Trust. This organization becomes the easement holder or "grantee," who is responsible for monitoring the property for activities that would be contrary to the conditions of the easement. Depending on the resources they protect, conservation easements are known by several different names. For example, an agricultural easement would protect a family farm. Types of conservation easements commonly used protect historic buildings and archaeological sites are the primary focus of this pamphlet and include historic preservation easements and open space or scenic easements.

Why place a Conservation Easement on your property?

Conservation easements are uniquely tailored to meet the needs of individual property owners. They allow owners to protect specific resources on their property while retaining ownership. An owner can choose which portions of the property he/she wishes to protect and which to exclude from protective covenants of the easement. He/She may also wish to allow limited public access, such as historic house tours or recreational activities, like hunting and fishing, provided they do not endanger the protected area of the property. Such limitations would be included in the terms of the easement.

Creating historic preservation easements and open space and scenic easements on your property may ensure the preservation of historical resources as a legacy for future generations.

Furthermore, they have the potential, through public access, to provide a community with many educational benefits. Economic benefits to conservation easements also exist. Tax incentives may include reduction in property, estate, and federal income taxes.

What should a Conservation Easement include?

Conservation easements protecting historic structures and archaeological sites should include the following information:

- An introduction explaining the reason for creating the easement.
- A section explaining the historic importance of the property.
- A description of the intentions of both the donor and holder of the easement.
- A precise legal description of the land and accompanying photographic documentation. This section is extremely important, as it defines the legal boundaries of the easement.
- A series of regulations and protective measures, as well as a description of the affected parts of the property.
- An explanation of site monitoring.
- A clause concerning potential default on a mortgage.
- A clause providing enforcement of the easement by its holders.

Most easements are crafted so that easement holders have final approval over changes made by the owner that may affect the protected area.

What are the tax incentives for conveying an easement?

Three types of tax benefits are available to owners who wish to place their property under a protective easement. These are:

1. *Property taxes*

Placing a property under an easement lowers the property's fair market value because it restricts the use of the land. This can result in a reduction of property taxes. State and local law as well as individual tax assessment determine the amount of this reduction. Most State

law requires property appraisers to recognize the reduced market value of a property under easement. See if your State has Statutes that may apply to such easements.

2. *Estate taxes*

Conservation easements allow families to permanently protect their land without giving up ownership. Children who have inherited land from their families often cannot afford the estate taxes and are forced to sell it. By placing an easement on family land that restricts its future development, the property's overall value is reduced, which results in lower taxes.

3. *Federal income taxes*

A property owner who donates a conservation easement may be eligible for a federal income tax deduction if the property under easement meets specific criteria. According to the IRS code, to be eligible for a federal income tax deduction, the easement must be donated in perpetuity to a qualified organization such as a historical society or a land trust, and for conservation purposes only. The IRS code allows tax deductions for donation of conservation easements in five resource categories:

1. Public recreation and/or education.
2. Significant natural resource.
3. Scenic enjoyment.
4. Pursuant to tribal/local government policy.
5. Historic preservation.

Two types of cultural resources qualify for historic preservation income tax deductions. These are a "historically important land area" and a "certified historic structure." To be considered "historically important," properties must meet National Register criteria or be associated with a National Register listed property. This can include a tribally recommended "Traditional Cultural Property", such as Horseshoe Bend National Battlefield, a standing structure or an archaeological site. A certified historic structure is placed on the National Register of Historic Places or listed as a contributing element to a National Register district as certified by the Secretary of the Interior.

In order to receive an income tax deduction using the historic preservation resource category, the property must be accessible to the public. Accessibility to the public can be as simple as maintaining visibility from the right of way of the property, or in the case of an interior easement, opening the building up to tours.

In some cases, archaeological sites fall under “scenic enjoyment” because of the broad definition the IRS code applies to this resource category. The IRS code, also through broad application, allows archaeological sites to be categorized pursuant to the Tribal/local government policy. The federal government recognizes tribal/local government efforts to conserve open spaces, as long as tribal/local government, at any level, clearly delineates the types of open spaces it wants to protect.

Most States have established laws pertaining to conservation easements. For instance, Florida Statutes Section 704.06, defines a conservation easement as “a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.” The law also stipulates that conservation easements:

- are perpetual, undivided interests in the property.
- are held by governmental agencies or bodies or by non profit organizations.
- will always be part of the deed and be binding for all future owners.
- can be enforced either through an injunction or proceeding.
- may provide for a third party right of enforcement such as a site steward.
- can be affected by actions taken by the owner of the property, the holder of the easement, the person or group designated as having the third party right of enforcement, or person authorized by another law.

How can donating an easement reduce a property owner’s income tax?

The value of an easement donation determines the federal income tax deduction. The value of the easement donation is the calculated difference between the property’s fair market value without easement restrictions and its fair market value with easement restrictions. According to the IRS code, any owner who makes a charitable donation of property is eligible to deduct up to 30 percent of his/her adjusted gross income each year, for a total of 6 years, or until the full amount of the donation has been deducted. Some examples are:

- Appraised fair market value of the property without easement: 600,000
- Appraised fair market value of property with easement: 500,000
- Amount of easement donation: 100,000
- The property owner is entitled to a charitable deduction of 100,000
- Annual adjusted gross income: 50,000.00 x 30 = 15,000.00
- The owner can deduct annually 15,000.00 until 100,000 has been reached, or until 6 years elapses, for a total of 90,000

Property owners may be eligible for other tax savings and should contact a tax lawyer for further information and advice. It is also important to remember that to be eligible to receive federal income tax benefits using the historic preservation category, archaeological sites and historic structures must be eligible for or listed on the National Register of Historic Places. Contact your State Historical Society for information on information on the National Register program.

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