

SOME FACTS ABOUT CONSERVATION EASEMENTS

What is a conservation easement and how does it preserve land?

For a family that cares about its land, the first preservation tool is a conservation easement. With a conservation easement you can protect your land and take advantage of tax benefits.

A conservation easement is a recorded deed restriction under which you give up some or all of the development rights associated with your property. Every conservation easement is different. Yours would be written to carry out your particular wishes for your particular piece of land. As an example of what you might say in the easement:

"I reserve the right to live here, to come and go as I please. I reserve the right to continue agricultural practices and cut some timber. Beyond that there can't be any further development, no subdividing of the land, or any other commercial enterprises."

Or, you might say, "I reserve the right to carve out two more house lots and beyond that, there will no further subdividing of the land, etc."

When you restrict your property with a conservation easement, you still own the property. You can sell the land, subject to the terms of the easement. You can leave the land to your children, subject to the terms of the easement. A landowner who cares about his property enough to protect it with a conservation easement, will continue to have the same use and enjoyment of the land as he had prior to the easement.

A properly drafted easement will limit only those activities which are harmful to the conservation value of your land, while allowing any activities which you specify such as haying (including leasing the hay rights), horseback riding, and building structures such as a storage shed or a barn for horses.

How is a conservation easement different from a deed restriction? In most cases a deed restriction cannot be enforced, one reason being that it is unclear who would enforce it. In the case of a conservation easement, the donee organization that will enforce the restriction is clearly identified.

In addition, a deed restriction which does not meet the tax law requirements for conservation easements can create potentially serious tax problems.

TAX ADVANTAGES OF A CONSERVATION EASEMENT

1. A conservation easement will create a lower estate tax for your heirs, because the value of the inherited property will be lower than before the easement.

2. Income tax deduction.

To be eligible for a charitable gift deduction, the tax code says you must "give" the conservation easement to a charitable organization (usually in the environmental field), or to a unit of government. What you are actually giving is the right for the donee organization to enforce the recorded restrictions on the use of your property for all time.

You will be eligible for an income tax deduction in the amount of the value of the conservation easement at the time of the gift to a charitable organization. To find out the value of a conservation easement, subtract the appraised value of the property after the easement from the value of the property before the easement.

Up to 30% of the landowner's income can be deducted in the year the gift was given. If the value of the gift is more than that, the rest is deducted over the next five years.

To be entitled to federal tax benefits for putting a conservation easement on your property, there are several requirements.

- A. The easement must be forever. An easement that is in effect for several years, will not meet the tax law rules for deductible gifts.
- B. The easement must go to a qualified conservation organization.
- C. You must get a qualified appraisal: one done by an honest, competent person who understands how to appraise conservation easements.

3. Your property tax bill will go down because the appraised value of your land will be less than before. Make sure the town assessors are aware of your easement and the reduced value of your land for property tax purposes.

THINGS TO THINK ABOUT WHEN DRAWING UP A CONSERVATION EASEMENT

Here are some of the questions you'll need to go over before drawing up an easement. The answers given are just suggestions; yours may be different.

Q: As a landowner, what activities do you wish to prohibit in the future?

A: Subdividing the land, putting up buildings other than what you wish

Q: What kinds of things are you doing on your land right now that you might want to continue doing?

A: The land will still belong to you, so any activities you are doing now will continue.

Q: What kinds of commercial or recreational activities do you want to be allowed on the land in the future, by your heirs or by future owner?

A: timbering, haying, fish hatchery, farming, building of one house, not to block view of land from the road, building of not more than two buildings for recreational use, such as: pool, horse barn, storage for sporting equipment, tennis court, poolhouse, etc. etc.

(The above answer contains some examples of specific activities that can be written into an easement.)

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A CONSERVATION EASEMENT CAN BE WRITTEN INTO A WILL.

This ensures that your wishes for future uses of your property will be carried out. The wording of the conservation easement should be worked out with the donee organization when the will is being prepared, so that it will be ready to accept your gift and enforce the easement.

There should be wording in your will to permit your executor to take appropriate steps to complete the easement transaction — appraisals, surveying,

Ownership of your land will pass to the heirs designated in your will. They can use the land for any purpose except those activities stated in the easement.

You can change your mind about a conservation easement just as you can with any part of a will. You can make changes to the wording, eliminate it from your will, or go ahead and make the easement gift while you are alive.

QUALIFYING FOR A TAX DEDUCTION VIA A CONSERVATION EASEMENT

Not every piece of land passes the "conservation test" for a federal tax deduction. The following all are good reasons to conserve land and all pass the tax test.

1. you are protecting habitat for an important or threatened animal or plant species
2. you are protecting a scenic view along a roadside threatened with subdivision
3. you are contributing to a greenbelt outside of a city
4. you are preserving a watershed of a scenic brook, river, or lake
5. you are preserving important historic property

Most tax laws use wording such as the following:

1. to preserve land for public outdoor recreation or education
2. to protect relatively important habitat
3. to preserve a scenic view for the general public
4. to preserve open space pursuant to a "clearly delineated" governmental policy
5. to preserve historic property

You will probably not qualify for the deduction if the land you are protecting has nothing unusual about it except that it does not currently have houses on it.

It is important to put a conservation easement on your land. Once you have taken this first step, then you can decide who will enforce this easement—an environmental organization, a governmental body, an irrevocable family trust, or whatever you decide after consulting an attorney who is knowledgeable in the field of land preservation.

This information on conservation easements, compiled by the Cheshire Land Trust, appears in the book *Preserving Family Lands: Book II* written by Stephen J. Small, an attorney in Boston. This book contains more detailed information on estate planning, such as setting up irrevocable trusts.

CONSERVATION EASEMENTS/MANAGEMENT AGREEMENTS TO PROTECT STREAMSIDES

In Virginia's Shenandoah Valley, the Valley Conservation Council used conservation easements in combination with management agreements to protect streamside or riparian areas.

This approach targets the most sensitive land on a given property, requires the restriction of only a small portion of most properties, specifies good management practices (more than simply preventing development), and permits owners to receive state and federal income tax deductions.

Working with local and soil and water conservation districts, the group encourages property owners to establish either permanent or temporary easements covering the riparian areas.

Under the easement the owner delineates and agrees not to harm the buffer zone closest to the stream and develops a management plan in cooperation with the easement holder and other agencies to ensure its protection. Such plans usually include guidelines for establishing and maintaining vegetation in the buffer zone. The Natural Resources Conservation Service may also share the costs of such conservation steps as tree planting or developing an alternative water source for livestock.

Landowners can reserve limited rights such as building a picnic shelter in the buffer zone.

The above information is from *Saving America's Countryside*, second edition.

An organization need not hold an easement in order to encourage an owner to grant them: other entities may possess better resources for seeing that the easement remains viable.

Examples: a land trust may be instrumental in seeing that a historic property is conserved via easement, but the easement may be held by a body such as a state Historic Landmarks foundation.

The Vermont Land Trust received an 85% undivided interest in a 243-acre tract when the owners for tax reasons wanted to make a gift by the end of a particular year but did not have the time to have the necessary surveying done. Later, the trust and the owner agreed to divide the property, with the trust taking title to 216 acres and the owners agreeing to conservation restrictions on the remainder.

Guilford: 2 gifts of 50% undivided interest five years apart (with a codicil in his will for the second gift in the event of his death). Owner could take greatest advantage of the tax incentives for the donation.

Previously the trust had gotten the right of first refusal (letter of intent to sell the property to the organization when he decided to dispose of it). A letter is not enforceable but group kept in touch with him and reminded him of his obligation. Eight years later, owner decided to donate the wetland to the land trust and sell the