

Conservation Easements

– Frequently Asked Questions

A conservation easement (sometimes also referred to as a conservation restriction) is a voluntary, legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners also will be bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed on a long-term basis.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to just a portion of the property, and need not require public access.

A landowner sometimes sells a conservation easement, but usually easements are donated. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement. Placing an easement on your property may or may not result in property tax savings.

Perhaps most important, a conservation easement can be essential for passing land on to the next generation. By removing the land's development potential, the easement lowers its market value, which in turn lowers estate tax. Whether the easement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.

Why should I grant a conservation easement to a land trust?

People execute a conservation easement because they love their open space land, and want to protect their land from inappropriate development while keeping their private ownership of the property. Granting an easement to a conservation organization that qualifies under the Internal Revenue Code as a "public charity" - which nearly all land trusts do - can yield income tax savings. Moreover, land trusts, some of which are more than 100 years old, have the expertise and experience to work with landowners and ensure that the land will remain as permanent open space.

Are conservation easements popular?

They are very popular. In the 5 years between 2000 and 2005, the amount of land protected by local and state land trusts using easements doubled to 6.2 million acres. Landowners have found that conservation easements can be flexible tools, and yet provide a permanent guarantee that the land won't ever be developed. Conservation easements are used to protect all types of land, including coastlines; farm and ranch land; historical or cultural landscapes; scenic views; streams and rivers; trails; wetlands; wildlife areas; and working forests.

How can a conservation easement be tailored to my needs and wishes?

An easement restricts development to the degree that is necessary to protect the significant conservation values of that particular property. Sometimes this totally prohibits construction, and sometimes it doesn't. Landowners and land trusts, working together, can write conservation easements that reflect both the landowner's desires and the need to protect conservation values. Even the most restrictive easements typically permit landowners to continue such traditional uses of the land as farming and ranching.

What steps do I take to write a conservation easement?

First, contact a land trust in your community to become acquainted with the organization and the services they can provide. Explore with them the conservation values you want to protect on the land. Discuss with the land trust what you want to accomplish, and what development rights you may want to retain. For example, you may already have one home on your property and want to preserve the right to build another home. That is one provision that must be specifically written into an easement agreement. Always consult with other family members regarding an easement, and remember that you should consult with your own attorney or financial advisor regarding such a substantial decision.

How long does a conservation easement last?

Most easements "run with the land," binding the original owner and all subsequent owners to the easement's restrictions. Only gifts of perpetual easements can qualify for income and estate tax benefits. The easement is recorded at the county or town records office so that all future owners and lenders will learn about the restrictions when they obtain title reports.

What are a land trust's responsibilities regarding conservation easements?

The land trust is responsible for enforcing the restrictions that the easement document spells out. Therefore, the land trust monitors the property on a regular basis -- typically once a year - to determine that the property remains in the condition prescribed by the easement document. The land trust maintains written records of these monitoring visits, which also provide the landowner a chance to keep in touch with the land trust. Many land trusts establish endowments to provide for long-term stewardship of the easements they hold.