

Frequently Asked Questions: What is a Conservation Easement?



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A *conservation easement* is a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. Each easement's restrictions are tailored to the particular property and to the interests of the individual owner.

To understand the easement concept, think of owning land as holding a bundle of rights. These may include, for example, the right to construct buildings, to subdivide the land, to restrict access, or to harvest timber. To give away certain rights while retaining others, a property owner grants an easement to a qualified charitable conservation organization such as a Land Trust or a public agency. The Land Trust or public agency is then responsible for enforcing the terms of the easement agreement.

The specific rights a property owner forgoes when granting a conservation easement are spelled out in the easement document. The owner and the prospective easement holder identify the rights and restrictions, which are necessary to protect the conservation values of the property. Glacial Lakes Conservancy meets the criteria of a preservation organization under the Internal Revenue Code Section 501(c)(3).

Why should I grant a Conservation Easement?

People grant conservation easements to protect their land from inappropriate development while retaining private ownership. By granting an easement in perpetuity the owner may be assured that the resource values of his or her property will be protected in perpetuity, no matter who the future owners are. In this way, landowners play a vital role in preserving America's natural heritage for future generations.

If there is a Conservation Easement on my property, does Glacial Lakes Conservancy control my property?

Organizations holding easements have a responsibility to make sure the terms of the easement are being honored, but they do not have control over or ownership of any part of the property.

Must a Conservation Easement allow public access?

Landowners who donate conservation easements determine whether to open their property to the public. The majority of donated easements are not opened to the public and that is decided by the current landowner. If an income tax deduction is to be claimed, however, some types of easements require public access. For example, if the easement is for recreation or educational purposes it must

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provide access. Access generally is not required for easements that protect wildlife or plant habitats, scenic open space or agricultural lands.

How can donating an Easement reduce a property owner's income tax?

The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a qualified conservation organization or public agency. Internal Revenue Code Section 170(h) generally defines "conservation purposes" to include the following:

- The preservation of land for outdoor recreation by, or the education of, the general public.
- The protection of relatively natural habitats of fish, wildlife or plants or similar ecosystems.
- The preservation of open space—including farmland and forest land—for scenic enjoyment or pursuant to an adopted governmental conservation policy. In either case, such open space preservation must yield a significant public benefit.

The actual amount of money saved in income tax is based on the value of the property. The owner has the property appraised both at its fair market value without easement restrictions and at its fair market value with easement restrictions. The difference is the easement value.

From 2006 to 2011, there was a raise in the minimum deduction a donor could take from 30% to 50% of a donor's adjusted gross income, as well as an increase of ten years in which the deduction could be carried forward – 15 years as opposed to 5 years. However, these increases in incentives are set to expire on December 31, 2011 but may return. All potential easement donors are advised to seek legal counsel.

Can donating an Easement reduce an owner's property tax?

Property tax assessment is usually based on the property's market value, which reflects the property's development potential. If a conservation easement reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner's property taxes.

The actual amount of reduction, if any, depends on many factors. State law and the personal attitudes of local officials and assessors may influence or determine the decision to award property tax relief to easement grantors.

How can granting an Easement reduce a property owner's estate tax?

Many heirs to large historic estates and to large tracts of open space—farms and ranches in particular—face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition,

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the Federal estate tax is levied not on the value of the property for its existing use, but on its fair market value. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his or her death, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate will be less, and the estate will thus be subject to a lower estate tax. (Note that if the property owner donates the easement during his or her lifetime, he or she may also realize income tax savings.)

Even if a property owner does not want to restrict the property during his or her lifetime, the owner can still specify in his or her will that a charitable gift of a conservation easement be made to a qualifying organization upon the owner's death. If the easement is properly structured, the value of the easement gift will be deducted from the estate, reducing the value on which estate taxes are levied. Again, a lower estate tax results.

How much will a Conservation Easement be worth if I want to consider donating or selling an easement?

Professional appraisers determine the value of conservation easements. They will determine the value of the property without an easement, then the value of the property once the easement has restricted land use on the property. The difference is the value of the easement.

Note: The above is provided as options and is not meant to provide tax or legal advice.