

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a restriction landowners voluntarily place on specified uses of their property to protect natural, productive or cultural features. A conservation easement is recorded as a written legal agreement between the landowner and the "holder" of the easement, which may be either a nonprofit conservation organization or government agency.

With a conservation easement the landowner retains legal title to the property and determines the types of land uses to continue and those to restrict. As part of the arrangement, the landowner grants the holder of the conservation easement the right to periodically assess the condition of the property to ensure that it is maintained according to the terms of the legal agreement.

Many rights come with owning property, including the rights to manage resources, change use, subdivide or develop. With a conservation easement, a landowner permanently limits one or more of these rights. For example, a landowner donating a conservation easement could choose to limit the right to develop a property, but keep the rights to build a house, raise cattle and grow crops. The landowner may continue his or her current use of the property, provided the resources the conservation easement is intended to protect are sustained.

Texas' landscape and its people are diverse. Because every landowner and every property is unique, a conservation easement agreement can be designed to meet specific, individual needs.

Why Use a Conservation Easement?

Landowners interested in conservation generally have two principal concerns. First is the desire to protect the natural or productive qualities of their property. The landowner is interested in conserving special features such as fertile soil, mature trees, wildlife habitat or a piece of history—even after his or her ownership comes to an end.

Along with conservation, landowners are also concerned about maintaining their property's productivity. The economics associated with land ownership are changing and fewer family-owned properties are the primary source of a family's income. Along with maintaining productivity, Texas landowners must also contend with the increasing tax burden associated with property ownership. Estate taxes, property taxes and the financial incentive to sell or develop are all factors that affect land use decisions.

Conservation easements enable landowners to protect resources they value for their children and future generations while maintaining private ownership. In Texas, conservation easements are generally donated to nonprofit conservation organizations, commonly known as land trusts. The donation of a conservation easement can have potentially significant tax benefits.

Conservation easements are recognized for legal and tax purposes by the State of Texas (Chapter 183, Texas Natural Resources Code) and the Internal Revenue Service (Internal Revenue Code, Section 170(h)) and land-owners should consult with their legal and tax advisors.

Commonly Asked Questions About Conservation Easements

Does every easement qualify for an income tax deduction?

No. To qualify as a charitable contribution, conservation easement donations must:

- be perpetual;
- be donated to a qualified organization (a nonprofit land trust or public agency);
- meet one of the "conservation purposes" tests outlined in the Internal Revenue Code.

Does every easement have to be perpetual?

For the donation to qualify for income and estate tax benefits the conservation easement must be perpetual and apply to all future owners. Some organizations may be willing to purchase conservation easements; easements that are purchased can be designed for a period of years. For example, the Wetlands Reserve Program administered by the Natural Resources Conservation Service, pays landowners for conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife.

What are the "conservation purposes" recognized by the Internal Revenue Code?

The Internal Revenue Service Code Section 170 (h) requires that conservation easement donations meet one or more of the following conservation purposes:

- protects relatively natural habitats of fish, wildlife or plants;
- preserves open space—including farms, ranches or forests—either for scenic enjoyment or in keeping with an adopted public policy;
- preserves land for public outdoor recreation or education; or
- preserves historically important land or certified historic structures.

Each conservation easement must meet one, but not all, of these recognized purposes. The conservation purpose of most conservation easement donations in Texas is derived from the protection of open space or wildlife habitat.

Can a conservation easement protecting open space in a real estate development qualify for income tax deduction?

No tax deduction will be allowed if the donation is made under compulsion, or in exchange for a benefit that the landowner expects to receive. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property.

Does a conservation easement grant public access to my property?

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but are not required to do so.

Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

What will a conservation easement mean for my children?

A conservation easement may reduce estate taxes paid by heirs. Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the organization that "holds" the easement. Families should consider the trade-off between immediate tax benefits resulting from reduced property value and permanent restrictions on land use.

What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be legally granted.

Can I still build on my property?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch can allow construction compatible with agricultural operations as well as changes in crop selection or management practices. A conservation easement can specify the location, size and type of one or more residences or other development on a property.

What if my property is mortgaged?

In order for a donated conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder, often a bank. With this document, the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

What if I don't own the mineral rights to my property?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if

- ownership of the mineral rights was separated from the land before June 13, 1978 and remains separated today; and
- the owner proves that the probability of surface mining occurring on the property is "so remote as to be negligible".

Where are conservation easements recorded?

Like a deed or other types of easements, conservation easement documents are recorded with other land records in the county in which the property exists.

Can conservation easements be changed or revoked?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements can be amended if:

- both the easement holder and the landowner agree to the terms of the change; and
- the IRS recognized "conservation purpose" of the conservation easement is not affected.

Can a conservation easement be donated by will?

Yes. The landowner must contact the intended easement holder before conveying the easement by will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowners' taxable estate, reducing estate taxes for heirs.