



Conservation Easements – How to Give Your Land Away but Still Use It

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WHAT IS A CONSERVATION EASEMENT?

Do you own a ranch in Montana or forest land in Colorado? Do you overlook that perfect canyon view, that serene spot at the beach, or that to-die-for piece of lakefront property? Whatever piece of splendor you own, you probably want to see it preserved and transferred to future generations. A conservation easement may be just the right planning tool.

You can create a conservation easement by giving your land (or just a piece of your land) to charity while retaining extensive rights to use the land. You will also receive a charitable income tax deduction and can pass the land to your descendants at a substantially reduced estate tax cost.

WHAT RIGHTS DO I RETAIN?

Envision your land ownership as a bundle of sticks. Each stick represents a right to do something with your property. Gifting a conservation easement simply relinquishes one or more development rights. But you, and ultimately your descendants, retain the right to enjoy many other benefits of land ownership.

You may want to retain hunting rights, the right to build a home, extract minerals, lease the property, or pass the property to your children. The more rights you retain, the less the value of any charitable income tax deduction.

And remember, this is not an all-or-nothing deal. You do not have to give an entire piece of land. You can retain a portion of the land with full development rights and then grant a conservation easement limiting development on your remaining land.

WHAT ARE THE TAX ADVANTAGES?

You may be eligible for both income tax and estate tax benefits. The income tax deduction will be the amount by which the development restrictions reduce the value of your land. The deduction is limited to 50% of your Adjusted Gross Income the year of the gift. If you cannot use the entire deduction the first year, you can

carry the deduction forward for an additional 15 years, with the same 50% limitation applying in those years as well.

For estate tax purposes, the value of the land is reduced up to \$500,000 by the drop in value created by the development restrictions. Therefore, the estate tax, which is calculated based upon the value of the land, may be reduced by up to \$225,000 (assuming a 45% estate tax rate). Of course, conservation easements on larger properties may reduce the value of the land by more than \$500,000. But this value reduction would not translate into estate tax savings.

The bottom line is that you can obtain a double tax benefit – you can take an income tax deduction to pass land to your descendants at a drastically reduced estate tax cost.

WHAT KIND OF LAND CAN I GIVE?

You can give any piece of land with significant conservation value. This includes, for example, beach property, ranch property, scenic property, forests, wetlands, and endangered species habitats. Stated more broadly, you must satisfy one of the following conservation purposes:

1. Protection of a relatively natural habitat of fish, wildlife, or plants of a similar ecosystem;
2. Preservation of open space, including farmland and forestland, if the preservation provides a significant public benefit;
3. Preservation of an historically important land area or certified historic structure; or
4. Preservation of land for outdoor recreation for, or education of, the general public.

Some of the preservation-based land grants that have satisfied these tests include:

1. Grants made to preserve land as a public garden;
2. Grants made to preserve farmland to assist a state flood control program;
3. Grants made to preserve forests along a highway to maintain a scenic view from the highway;
4. Grants made to preserve a stretch of undeveloped oceanfront property to maintain a scenic view from the highway; and
5. Grants made to preserve a thin strip of riverfront property, immediately behind which was the landowner's home.

WHO OWNS AND MANAGES THE LAND?

You will continue to own the land. You will bear all of the ownership costs and liabilities, and you will have the right to keep people off of your land. Unless you

create a conservation easement allowing the public onto your land, you have no obligation to allow anyone onto your land.

WHERE DO I GIFT THE CONSERVATION EASEMENT?

Private foundations are generally not a fit for conservation easements — not even a friend's private foundation. You should give your conservation easement to a public charity. However, because most public charities are not capable of properly monitoring a conservation easement, so it is best if you give your conservation easement to a public charity routinely engaged in conservation efforts with extensive experience in conservation easements. The Nature Conservancy is perhaps the best known organization routinely accepting these types of gifts.

If you gift the conservation easement to a private foundation, you will not receive an income tax deduction. Additionally, you may run into estate tax challenges and/or may violate certain private foundation prohibitions against self-dealing.

HOW LONG DOES IT LAST?

A conservation easement is perpetual, which means it lasts forever. The charity will monitor the property over time and will, if necessary, take legal action to enforce the conservation easement.

SAMPLE LANGUAGE

Conservation easements are long, complex documents. We have reproduced below a statement of purpose from a conservation easement. You will likely see similar language in your own document.

- 1. This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, scenic, historic, agricultural, forested, and open space condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property that impair or interfere with the Conservation Values are expressly prohibited.*
- 2. The Donor is the Owner of the Property and is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Easement and the preservation of the Conservation Values.*
- 3. The Conservancy is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Conservation Easement. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also preserves open spaces, including farms and forests, where such preservation is for the scenic*

enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

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