

Land Conservation Strategies



85 Old Dublin Pike
Doylestown, PA 18901
(215) 345-7020
(215) 345-4328
HeritageConservancy.org

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Land Conservation Strategies: Landowner's Options for Protecting Family Lands

Preserving family lands from future development can be a satisfying act of generosity for people committed to protecting the environment. Many valuable sites of historic importance, natural significance and scenic beauty, protected today, would have been developed had it not been for the generosity of individuals, groups and companies who chose to donate their land to one of the public or private organizations which can accept land and assure that it will remain in its natural state.

For over 50 years, Heritage Conservancy has been working with landowners to preserve their family lands through a variety of techniques designed to carry out the landowner's wishes and also meet their financial needs.

This guide highlights six conservation strategies but focuses on conservation easements, one of the more frequently used means of preserving land.

Fee-Simple Donation

A fee simple donation is the transfer of a property by deeding it directly to a charitable organization for conservation or other purposes. This method generally offers significant tax benefits.

Donation of Land with Life Estate

This is similar to a fee-simple donation with the exception that you retain the right to live on your property for the remainder of your life. This method also offers tax benefits although probably less than a fee-simple donation.

Bequest

You can donate your land or a conservation easement through your will allowing you to live on and maintain control of your property during your lifetime. A bequest may significantly reduce your estate taxes.

Conservation Easement Donation

A conservation easement is a legally binding covenant between current and future property owners and an organization such as the conservancy which preserves significant natural areas (i.e. stream valleys, farmland, woodland, wildlife habitat, unique plant communities) and special natural features of the property by restricting selected uses.

A conservation easement allows a property owner to retain ownership of his property, including the ability to pass the property on to his heirs or sell the property, while still providing for the site's protection. It assures that future use of a property will be consistent with conservation purposes through specific clauses in the easement document. The property remains in private ownership and does not need to be opened to the public

Bargain Sale

A bargain sale is the sale of a property to a qualified tax exempt organization or government entity for less than the fair market value. A bargain sale provides a tax benefit to the property owner as the difference between the appraised value and the actual sale price.

Conservation-Based Development

Conservation-based development is a process in which development is driven by the preservation of the ecological values of the property as well as the achievement of the economic goals of the owner. This is accomplished by limiting future uses and regulating changes that can be made to the land while providing a reasonable return on the property owner's investment in the land. This technique may use a combination of the above cited preservation tools to accomplish this goal.

In this process the property remains in private hands. The right to sell or transfer in any way remains with the property owner, subject to an easement. This preserves a significant portion of the original tract as “open space” and may afford tax benefits if an easement is donated.

Land Conservation Strategies: Conservation Easements - Questions and Answers

1. What is a conservation easement?

A conservation easement is a method of protecting and preserving significant natural areas, (i.e. stream valleys, farmland, woodland, wildlife habitat, unique plant communities) and special natural features of the property by restricting selected uses.

2. Will I still own my property under "easement?"

Yes. The conservation easement allows the property owner to retain title, pass the property on to heirs or even sell the property. An easement protects the property against uses which may change the natural features of the land.

3. How long does an easement last?

In most cases, conservation easements are placed on a property to last forever, legally known as “in perpetuity.” Easements are legally binding covenants to current and all future owners of a property placed under conservation easement. The easement is recorded in the Land Records Office in the form of a deed. Any title search of a property will reveal the existence of a conservation easement and all future owners will be bound by it.

4. What are the advantages of an easement?

When a landowner places a property under conservation easement, he or she has permanently protected that property. The restrictions placed on the property through the conservation easement allow the landowner to determine how the property will be used long after he is gone. In addition to the knowledge that the property will remain protected against development, the owner can derive tax benefits from the easement. These can include reduction of federal income taxes, reduction of estate or inheritance taxes, and possible deduction in real estate taxes.

5. **Can I still reside on my land after an easement has been placed?**

Yes. A conservation easement allows you to retain title and also remain on the land. It only restricts those uses such as subdivision and development which are described in the easement. If desired, easements may be written to provide for specific limited development of a property, such as additions or modifications to existing structures, home sites for children, farm structure construction, and specific property uses, such as cutting of firewood and normal agricultural practices.

6. **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, such as family farms, face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition, the federal estate tax is levied not on the value of the property for its existing use, but on its fair market value, its highest and best use. 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 or by including the easement in his will, 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.

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. Assuming that 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.

7. **Must an easement open my land to public access?**

No. The land is still privately owned, and the easement-holding organization is responsible for monitoring the property. If an easement donor does wish public access for educational or environmental recreation, the easement can be written to allow for this.

8. **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 listed under Section 501(c)3 of the Internal Revenue Code. The Heritage Conservancy is a qualified organization under this code. Further qualifications exist under Internal Revenue Code Section 170(h) which generally defines “conservation purposes” to include the following:

- the preservation of land areas for outdoor recreation by, or for, 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, and
- the preservation of historically important land areas or buildings

A donation need only fit into one of these categories to qualify. To determine the value of the easement donation, the owner has the property appraised both at its fair market value without the easement restrictions and at its fair market value with the easement restrictions. The difference between these two appraised values is the easement value. Detailed federal regulations govern these appraisals.

Example: A property has an appraised fair market value of \$100,000. Mrs. Price, the landowner, donates a conservation easement to a local land trust. The easement restrictions reduce the property's market value to \$64,000. Thus, the value of her gift of the easement is \$36,000. Assuming the easement meets the conservation purposes test, Mrs. Price - like any donor of appreciated property - is eligible to deduct an amount equal to 50* percent of her adjusted gross income each year for a total of 16* years, or until the value of the gift has been used up. If Mrs. Price has an annual adjusted gross income of \$60,000, she can deduct \$30,000 a year (50% x \$60,000) until she has used up the \$36,000 value. This is just a simple example.

*Current tax benefit until 12/31/2011. Deduction will revert back to 30% for up to five additional years 1/1/2012.

Easement donors may qualify for greater tax savings, especially with the current inflated price of real estate in our area. Potential easement donors should seek their own legal counsel to determine exactly how this method of land protection will benefit their individual situation.

9. **Can granting an easement reduce an owner's property tax?**

Property tax assessment usually is 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. This is unlikely if the property is already valued with a preferential tax assessment which relates to farmland or open space and woodland use. However unlike these preferential tax assessments, a conservation easement is a permanent preservation method and as such would not be subject to any roll-back taxes, as the land use will not change.

The actual amount of property tax 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 grantor.

10. **Is there any cost to me in placing my property under conservation easement?**

Yes. There are some costs accrued by the landowner in placing a Conservation Easement on a property. These include:

- the costs of legal counsel
- an appraisal necessary for IRS purposes
- survey costs only if a portion of the property not clearly defined in a legal description is to be placed under easement
- County Recorder's fee
- Heritage Conservancy's costs: the materials and staff time necessary to prepare the easement documentation and the baseline documentation, and
- an endowment for Heritage Conservancy to monitor and defend the easement.

Land Conservation Strategies: Resource Protection

Glossary of Terms

BARGAIN SALE – Sale of a property to a tax exempt organization for less than the fair market value.

BASELINE DOCUMENTATION – Information and documentation to give evidence to the condition of land at the time a conservation easement is made.

BEQUEST – A gift of money, real property, or conservation easement in a person's will; can secure conservation of property and take property value out of calculation for estate tax.

CAPITAL GAINS – profit from the sale of land or other capital asset in excess of cost, or other basis.

CHARITABLE CONTRIBUTION – The tax deductible transfer of money or property to a qualified charitable organization.

CONSERVANCY – An organization specifically set up to promote and affect conservation of natural and historic resources.

CONSERVATION – Careful preservation and protection of resources, usually referring to land and related natural resources, includes planned management of resources to protect their future integrity and value.

CONSERVATION-BASED DEVELOPMENT – a development plan for a property that frequently incorporates the use of conservation easements and permits landowners to undertake a specified and limited amount of future building or development that does not interfere with the land's conservation value.

CONSERVATION EASEMENT – A legally-binding agreement between a property owner and an organization such as a conservancy which protects natural resource values of the property by restricting selected uses. The property remains in private ownership and does not need to be opened to the public. Tax benefits may apply to the donor.

DEED RESTRICTION – a written stipulation contained within a deed that restricts certain future uses of the property generally inserted at the time of transfer. A deed restriction may include restrictions similar to those contained within a conservation easement. However, enforcement may only be carried out by the prior owner or other parties to the transaction and the restrictions may be canceled at any time by mutual written agreement.

DONOR – A person who makes a charitable contribution to a qualified organization.

ENDOWMENT – A permanent stewardship fund established to support costs of maintaining a property or defending and monitoring a conservation easement. Permanence is assured by restricting withdrawals from the principal and relying on investment income for annual cost.

ESTATE TAXES – The combined state and federal taxes levied against one's total estate including real property at death, payable within nine months and before distribution to the heirs. For any estate worth more than the allowable exemption (\$675,000 in 2001), federal taxes can be as high as 55%. Under the federal tax reform act passed in April 2001, the exemptions and rates are scheduled to change over the next several years to reduce the amount of estate taxes, but for large estates tax rates will continue to be substantial in the years to come.

GIFT IN FEE SIMPLE – Transfer of a property by deeding it directly to a charitable organization for conservation or other purposes. Tax benefits may apply to the donor.

QUALIFIED CHARITABLE ORGANIZATION – An organization which has been recognized by the Internal Revenue Service (IRS) as a 501(c)(3) organization for the public benefit.

STEWARDSHIP – Caring for and managing resources with good conservation practices to ensure their protection; a philosophy of land management which focuses on caring and preservation rather than control



Contact:
Laura Baird
Resource Protection Specialist
lbaird@heritageconservancy.org
215 345-7020 x 135



85 Old Dublin Pike
Doylestown, PA 18901
(215) 345-7020

www.HeritageConservancy.org