

Conserving Your Family Land: A Look at the Conservation Easement

You have the opportunity to leave a legacy for generations to come by preserving your family land. Whether you use your land for farming, recreation, or simply to enjoy its natural wonders, you can permanently protect your land from development. With the help of a land trust such as Athens Conservancy, there are several options for conserving your land, allowing you to continue to own it.

Questions and Answers

What is a land trust?

Land trusts are nonprofit conservation organizations that protect open space, farmland, scenic areas, natural areas, wetlands, and historic properties. Land trusts, like Athens Conservancy, preserve land that is important to our communities and regions. In Ohio, there are more than 40 land trusts, most of which operate regionally and focus on a specific area, county, or watershed.

Land trusts may be operated by a volunteer board of directors, and may also have a small staff. Several options may be offered by the land trust to help you protect your property for the future:

1. **Conservation Easement.** A conservation easement is a legal agreement between you (the landowner) and a land trust or qualified government organization. It permanently limits current uses and future development of your land, according to your wishes. Like any real estate transaction, a conservation easement is recorded in the official records of the county where your land is located. You agree to permanently protect your property from development. You still own your land; you may continue to farm hunt, manage, control invasive species, or just enjoy the land as is. You may sell it or pass it to your children or other heirs. The land remains in private ownership, and you continue paying county property taxes. The land trust is responsible for making sure the terms of the conservation easement are followed.

Donated conservation easements may qualify for a charitable income tax deduction under federal tax regulations. A qualified appraiser determines the value of your property; your income tax deduction is based upon the difference between the land's value with an easement and the value without an easement.

2. **Donation of Land.** By donating land to a land trust for conservation purposes, you create a legacy for current and future generations. Donating property can also provide substantial charitable income tax deductions and estate tax benefits. Land can also be donated with a "life estate" which permits residency and control for the remainder of the donor's lifetime

3. **Bargain Sale.** If you cannot afford to make a donation of land but need to realize some income from your property, you may choose to sell your property to a land trust at a reduced price. Depending upon funding available to the land trust and the appraised value of the land, you may be able to sell your property and qualify for significant income tax advantages, both as a charitable income tax deduction and a reduced sales price (capital gain) of the property.

Consult with your local land trust to discuss land protection options to determine what best meets your goals. You will also want to consult with your legal and financial advisors to

determine how various land protection options might be the best fit for your financial situation and objectives.

What are the steps to create a conservation easement?

A representative from the land trust will meet with you and walk your property to determine the feasibility for a conservation easement. Notable features, such as rare species, unusual habitats, and other attributes will be recorded. A baseline document will be prepared to document existing conditions and the conservation values found on your property.

The land trust will review the title of ownership and determine if any mortgages or liens are present. The land trust will request any information regarding recent land surveys, and will discuss the types of restrictions and rights that you may want to retain.

A land management plan will be prepared. The baseline document and the land management plan will be included as supporting documents in your final easement.

After you and the land trust have agreed upon the restrictions and reserved rights, the land trust will prepare a draft conservation easement. Once the conservation easement is approved by you, and you have reviewed it with your attorney, the land trust board of directors must approve your easement.

The conservation easement is recorded in the county recorder's office after it is signed. The land trust subsequently will provide the appropriate letters and IRS forms acknowledging the easement donation.

What are the "conservation values" recognized by the IRS?

The IRS requires that land protected by an easement meets one or more of the following conservation values:

- The land protects relatively natural habitat of fish, wildlife or plants
- It preserves open space – including farms and forests – either for scenic enjoyment or in keeping with a clearly delineated public policy
- It preserves land for public, outdoor recreation or education
- It preserves historically important land or certified historic structures.

What activities are *not* allowed in an easement?

Activities generally not allowed include subdivision of the property, building of additional roads or structures (unless specified in the easement), mining and filling activities, and clear-cutting of forest.

Who enforces the terms of a conservation easement?

The easement holder (land trust or government entity) assumes the responsibility and legal right to enforce easement restrictions. The holder also has the right to access the property for inspections. A land trust will establish an annual monitoring program and arrange appointments with the landowner to visit the easement property.

How are easement values determined?

If you are interested in taking an income tax deduction, a qualified appraiser must complete an evaluation of your property, following guidelines established by the IRS. The appraiser establishes current value without the easement restrictions and value after the restrictions are in place. The difference between the two values becomes the value of the easement. Example: if the current fair market value of a property is \$95,000 but the easement reduces its worth to \$50,000, the value of the easement is \$45,000.

What are the tax incentives associated with a conservation easement?

Always consult your tax advisor for the latest incentives or changes in the tax laws associated with a conservation easement. Easements must be given in perpetuity to a qualified conservation organization (like Athens Conservancy) to be eligible for federal income tax deductions under the rules for charitable contributions.

There are other tax benefits in establishing a conservation easement. It can be a valuable tool that should be considered in estate planning, and can help ensure that your property remains in the family by eliminating or reducing estate taxes. You may also donate a conservation easement through your will as part of your estate planning.

Does a conservation easement allow public access to my property?

No, you retain control of access unless public access is explicitly permitted by the easement; most easements do not.

Can I sell my property?

Yes, it can be sold or inherited, but the conservation easement restrictions remain in place for the buyer and all subsequent owners.

Can conservation easements be changed or revoked?

Because conservation easements qualify for tax deductions under IRS rules, they are permanent. They can only be revoked or changed under rare or unexpected circumstances.

(12.31.23)