

Conservation Easement Opportunities: Protecting Natural Resources While Receiving Tax Savings

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Conservation easements may be a great example of "doing well by doing good." They help conserve fish and wildlife, clean water, natural habitats, historic properties, farmland, and timberland. They also provide other public benefits such as outdoor recreation and public education. What's in it for you?— the satisfaction of preserving resources for future generations and the potential to enjoy substantial property, income, and estate tax savings.

Furthermore, conservation easements can be specifically tailored to fit your particular tract of land and allow you to retain many of your rights to use and enjoy it for activities consistent with the conservation purpose.

What is a Conservation Easement?

A conservation easement is a legally enforceable restriction on the use of your property such as a restriction on residential or commercial development, mining, or road construction activities. Your conservation easement can be enforced by the organization to which you grant the easement. The donee organization may be a governmental unit, a nonprofit land trust, or other appropriate public charity.

Your conservation easement may allow you to still use your land for some level of timbering and agricultural or horticultural pursuits consistent with the conservation purpose. Your continued use of the land for hunting, recreation, or other similar purposes may well be permitted. Depending upon the conservation purpose of your easement, you may not be required to grant a right of public access to your land.

Qualification for Tax Benefits

To qualify for tax benefits, your easement must be perpetual and for an appropriate conservation purpose. Such purposes may include recreation, education, habitat protection, historic preservation, open space protection, and protection of scenic enjoyment of a visual landscape such as along a scenic drive or river. The conservation purpose and the other attributes of your qualified contribution are subject to a number of regulatory requirements and limitations.

If you reserve rights to use your land, you must agree to notify the donee in writing before exercising certain reserved rights. The donee must also be given the right to enter your property at reasonable times to ensure your compliance with the easement, as well as the right to enforce the easement by appropriate legal proceedings.

A baseline report is generally necessary in order to identify and document the natural aspects of your property that are worthy of preservation. The report will assist in gauging the success of preservation efforts and assist the donee organization in the development of a maintenance plan for the easement.

In the event your property is subject to a deed of trust or mortgage, it must be cancelled or subordinated to the conservation easement. Subordination means that a foreclosure of the mortgage or deed of trust will not cut off the conservation easement, and any purchaser of your affected property at a foreclosure sale will be subject to your easement's limitations.

Property Valuations

An appraisal of your property by a qualified professional will be required in order for you to obtain many of the potential tax benefits of your conservation easement. The appraisal must include certain required information and meet specific standards and timing requirements in order to be considered a qualified appraisal for tax purposes. Generally, your easement is valued by subtracting the value of your property after the easement is granted from its value if left unencumbered by the easement.

Property Taxes

Your conservation easement may allow you to limit local property taxes, particularly where your land otherwise would have a potential for development and could be valued by the Tax Assessor accordingly. Property which is appraised at its present use value (such as for agricultural or timber uses) will continue to be eligible for such land valuation discounts. The discounts will be available for property subject to your conservation easement without regard to the normal production or income requirements which usually apply to the present use valuation program.

Federal Income Taxes

A federal income tax deduction may be available to you in an amount equal to the value of the conservation easement you have given. For the tax year of the gift the deduction can be up to 50% of your contribution base if you are an individual donor and up to 10% of the taxable income if you are a corporate donor. If all of the deduction cannot be used by you during that tax year, it may be carried forward for up to fifteen additional years if you are an individual donor and for up to five additional years if you are a corporate donor. These individual deduction limits and carry forward periods are very generous, and may be even more generous if you are a qualified farmer or rancher.

North Carolina Income Tax

Because your North Carolina individual state income tax is based upon federal taxable income (which includes deductions for charitable gifts), your federal deduction for the gift of a conservation easement will be included automatically for state income tax purposes.

Federal Estate Taxes

Because federal estate taxes are based upon the fair market value of the assets of the estate, reducing your property's value by subjecting it to a conservation easement may enable your family members to maintain ownership of your property without having to sell it to fund tax payments. A charitable estate tax deduction for the value of your easement also may be available if the conservation easement is granted by your Will.

In addition to the benefits to your family resulting from reduced values in computing the size of your estate for tax purposes, Section 2031(c) of the Internal Revenue Code may allow exclusion from your estate of up to 40% of the value of your land which is subject to a qualified conservation easement. This exclusion may be available even if your qualified conservation easement is granted after your death by your executor or family members. The exclusion limitation is currently \$500,000.

A special election must be made in order to take advantage of the 40% exclusion. There are also several technical requirements for the exclusion. For example, your property must have been owned by you or a family member for three years prior to your death, and the exclusion does not apply to any retained development rights. There are also reductions in the exclusion to the extent the value of your qualified conservation easement is less than 30% of the total land value before the easement.

Conclusion

Conservation easements provide a unique tool which may allow you the flexibility of continuing to own and make certain uses of your land while at the same time obtaining tax benefits and achieving preservation or other conservation goals.

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