



## Conservation Easements: A Protection Partnership

**Q. What is a Conservation Easement?** A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Conservation easements offer great flexibility. They allow you to continue to own and use your land and to sell it or pass it on to your heirs, while protecting the important natural features of the property.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners also will be bound by all of the terms of the easement. The land trust is responsible for enforcing these terms with current and subsequent landowners.

A landowner sometimes sells a conservation easement, but usually easements are donated. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement.

**This helpful Q & A covers many of the basics about conservation easements. But interested landowners should consult with their own financial and legal advisors to decide if this option meets their needs.**

**Q. Who is allowed by law to hold a conservation easement?**

**A.** A qualified nonprofit, tax-exempt conservation organization - such as a land trust or conservancy - may hold a conservation easement, as can federal, state or local government entities.

**Q. Who decides what restrictions are included in a conservation easement?**

**A.** The landowner and the land trust or other nonprofit, tax-exempt conservation organization decide together what is needed to protect the land's conservation value while, at the same time, meeting the financial and personal needs of the landowner and their family. This is a land-protection option known for its flexibility. For

example, an easement on property with rare wildlife habitat may limit or further prohibit development of any kind while a farmland easement would allow continued farming and the building of limited agricultural structures. Land subject to a conservation easement remains privately owned and managed by the landowner, but enforcement of the easement restrictions becomes the permanent responsibility and legal right of the land trust.

**Q. Does a conservation easement grant public access to land?**

**A.** An easement need not require public access. However, public access to protected land can be a stipulation of a conservation easement agreement if mutually acceptable to the landowner and the land trust.



***Q. What effect does a conservation easement have on a landowner's ability to sell, develop or pass the land to his or her heirs?***

**A.** While restrictions defined in a conservation easement document run with the property forever, land protected in this way can be sold, passed to heirs or otherwise transferred at any time. Land-use restrictions may affect only certain portions of a property, significant woodland or wetland areas, for example, but allow development on the remainder. Transfer of ownership does not affect the integrity or enforceability of the easement.

***Q. What are the financial or tax benefits of donating a conservation easement?***

**A.** Donation of a conservation easement to a qualified conservation organization is treated as a charitable deduction for tax purposes as long as it meets federal tax code requirements.

- Federal and state **income tax** benefits vary with each easement but, in general, to qualify as a deduction, the easement must serve conservation purposes by preserving natural habitat, historic sites, unique scenic landscapes, wildlife corridors or connections to other protected parcels, public recreation or education areas, or open space.
- Federal **estate taxes** can be affected by the donation of a conservation easement. Since the easement reduces the market value of the property, its development potential is likewise reduced, lessening the impact of inheritance taxes and allowing the heirs to retain property that might otherwise have to be sold.
- Reduction in the fair market value of land through a conservation easement also allows a landowner to give more land away in any one year without creating a **gift tax** obligation or may help reduce the amount of gift tax owed.
- Land subject to a conservation easement may qualify for a reduction in assessed valuation, thereby reducing **property taxes** on the land. Under Wisconsin law, local property tax assessors

are required to consider the effect of a conservation easement when setting the taxable value of the property.

***Q. How is the value of a conservation easement determined?***

**A.** The value of the gift, for tax purposes, is the difference between the property's full market value before and after donation of the conservation easement as determined by a qualified land appraiser.

***Q. How is a conservation easement administered?***

**A.** Accepting the donation of a conservation easement is a tremendous responsibility for a land trust. It means accepting the obligation of monitoring and enforcing the easement terms in perpetuity. Once an easement is established, the land trust documents the site's conservation values, performs periodic site inspections to ensure all the easement's terms and conditions are being honored and keep all future owners of the site informed of the easement agreement.

If a violation is found, the landowner is notified according to documented procedures and steps taken to repair any damage. Most easement documents contain language that defines the process for resolving disputes between grantor and grantee. The land trust has the right and responsibility to take legal action, if necessary, to enforce easement restrictions.

***A stewardship fund*** often is established along with the conservation easement agreement and is used to cover the expense of monitoring, enforcing compliance and legal defense of the easement. Many landowners make a contribution to this fund, to ensure that their land will be used according to the easement terms after their ownership.