

## Frequently asked questions

### Who may give a conservation easement?

Any landowner of record may donate a conservation easement establishing self-imposed restrictions on the uses of his or her property. If there is a lienholder on the property, the lienholder must accept and agree (subordinate) to the terms of the easement. Taxes are still paid on the property by the owner of records.

### What rights and duties does the landowner retain?

A landowner gives up only those rights which are consistent with achievement of the conservation intent specified in the easement. All other rights of ownership remain unchanged. Except for the specific restrictions set forth in the conservation easement document, the landowner retains all other rights which were originally conveyed when the property was acquired. The land can be sold, leased and/or conveyed to heirs at the death of the original owner. Additionally hunting, fishing, other recreational uses, timber management and utilization of other natural resources such as minerals can all be enjoyed as long as such activities are consistent with the restrictions that are chosen and placed in the initial easement conveyance.

### How can you know if your property qualifies for a conservation easement?

Basically, if your property is undeveloped, forested in native species or has a minimum amount of agricultural or intense timber use, it will meet the basic qualification for conservation easement conveyance. In Mississippi most property currently in prairie, upland or bottomland hardwoods, mixed pine/hardwoods or longleaf pine qualifies for development of a conservation easement.

### Does every easement qualify for an income tax deduction?

No. To qualify as a charitable contribution, conservation easement donations must be perpetual, must be donated to a qualified organization (a nonprofit land trust or public agency) and meet one of the "conservation purposes" tests outlined in the Internal Revenue Code. Easement donors should be aware that these contributions are subject to review by the Internal Revenue Service for a number of years.

### Does every easement have to be perpetual?

For the donation to qualify for income and estate tax benefits the conservation easement must be perpetual and apply to all future owners. Some organizations may be willing to purchase conservation easements; easements that are purchased can be designed for a limited period of years. For example, the Wetlands Reserve Program administered by the Natural Resources Conservation Service, pays landowners for conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife. The Grasslands Reserve Program, also administered by the Natural Resources Conservation Service, pays landowners for conservation easements on restored or existing grasslands that provide significant habitat for birds and other wildlife.

### What are the "conservation purposes" recognized by the Internal Revenue Code?

The Internal Revenue Service Code Section 170(h) requires that conservation easement donations meet one or more of the following conservation purposes: protects relatively natural habitats of fish, wildlife or plants; preserves open space, including farms or forests, either for scenic enjoyment or in keeping with an adopted public policy; preserves land for public outdoor recreation or education; or preserves historically important land or certified historic structures. Each conservation easement must meet one, but not all, of these recognized purposes. The conservation purpose of most conservation easement donations in Mississippi is derived from the protection of open space or fish and wildlife habitat.

### What does "significant" mean?

In addition to meeting the basic "conservation purposes," the IRS requires the donation be significant with regards to, but not limited to, the North American Wetlands Conservation Act, the North American Waterfowl Management Plan, the Environmental Monitoring and Assessment Program, the Partners in Flight Program, the Clean Water Act, the Endangered Species Act, the conservation provisions of the Farm Bill and Mississippi's Comprehensive Wildlife Conservation Strategy.

### Can a conservation easement protecting open space in a real estate development qualify for an income tax deduction?

No tax deduction will be allowed if the donation is made under compulsion or in exchange for a benefit that the landowner expects to receive. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property. The property owner must be prepared to defend the appraisal of his or her deduction.

### Does a conservation easement grant public access to my property?

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but landowners are not required to do so.

### Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

### What will a conservation easement mean for my children?

Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the organization that holds the easement. A conservation easement may reduce estate taxes paid by heirs. Families should consider the trade-off between the satisfaction of conservation goals, tax benefits resulting in reduced property value and permanent restrictions on land use.

### What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be granted legally.

### Can I still build on my property?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch can allow construction compatible with agricultural operations, as well as changes in crop selection or management practices. A conservation easement may specify the location, size and type of one or more residences or other development on a property.

## What if my property is mortgaged?

In order for a donated conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder, which is often a bank. With this document the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

## What if I don't own the mineral rights to my property?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if ownership of the mineral rights was separated from the land before June 13, 1976, and remains separated today if the owner proves that the probability of surface mining occurring on the property is "so remote as to be negligible."

## Where are conservation easements recorded?

Like deeds or other types of easements, conservation easement documents are recorded with other land records in the county in which the property exists.

## Can conservation easements be changed or revoked?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements may be amended if both the easement holder and the landowner agree to the terms of the change or if the IRS recognized "conservation purpose" of the conservation easement is not affected.

## Can a conservation easement be donated by will?

Yes. The landowner must contact the intended easement holder before conveying the easement by will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowner's taxable estate, reducing estate taxes for heirs.

## What restrictions can be included in a conservation easement?

Conservation easements restrict future development of the property. However, they are flexible and may include or exclude almost any restricted use that is agreed to by the landowner and the conservation organization holding the easement. For example, the easement can be so restrictive that it mandates that the land be left in its natural state. On the other hand, it is common for easements to allow for various activities such as farming, hunting and fishing, planting of food plots and, in some cases, limited structural development.

### **Can the conservation easement be placed on just a portion of a tract of land or must it be placed on the entire property?**

An easement may be applied to an entire property or to any portion of it, depending upon the character of the land. It is not uncommon to have a portion of a particular land ownership fronting a natural lake area, river front or in bottomland hardwoods with associated wetland habitats.

Generally, properties with the highest risk of development having the most desirable development characteristics carry the most advantageous tax benefit.

### **What can a conservation easement mean to a landowner?**

By placing a conservation easement on a particular parcel of land, a property owner can be assured that the land will forever remain in a natural state unaltered by humans. Paradoxically, a landowner may be rewarded personally and philosophically by the knowledge that protective covenants are in place to promote his or her specific conservation ethic while receiving immediate financial benefits through the tax advantages that accrue.

### **What are the financial benefits to the landowner?**

The value of a conservation easement is established by a competent real estate appraiser experienced in the use of conservation easements. The appraiser will establish the value of the property without the easement then deduct the value of the property with the easement in place. The difference between the restricted and unrestricted value of the property is the amount considered to be a charitable contribution for income tax purposes. In addition, the easement may reduce the value of the property in the landowner's estate, thereby reducing the amount of estate taxes that will be paid.