

Conservation Easements



WHAT IS AN EASEMENT?

Easement- an interest in real property that conveys use, but not ownership of a portion of an owner's property.

The Dictionary of Real Estate Appraisal 3rd Edition

Conservation Easements



What is a Conservation Easement?

Conservation Easements



What is a conservation easement?

- A non possessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open space-use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. *Uniform Conservation Easement Act-1981 Act.*

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- What is the difference between an easement and a conservation easement?
- Easements typically convey use
- Conservation easements typically do not convey use

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To better understand easements, let's look back at some easement history....

- They date back to the time of Edward I
- First court decision took place in 1658
- United States history dates back to the 1800's
- Involve Federal and Private organizations
- Conservation enabling acts
 1. 1950's & 1960's adopted by individual states
 2. Uniform Conservation Easement Act

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Why have conservation easements become so “popular”?

- Philanthropic nature of wealthy individuals
- Tax benefits

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- Philanthropy is a deeply imbedded tradition in the United States
- Charitable giving has long been a part of our socioeconomic system
- To encourage philanthropy in the private sector, Congress, since 1917, has granted favored tax treatment for charitable contributions by individuals.

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What are some of the benefits of conservation easements?

- Reduces taxable income for:
- Individuals filing on Form 1040
- Partnership's Form 1065
- Corporation's Form 1120
- Sets aside open space for specific uses
- Preserves places, buildings and other objects of historical significance

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- Can provide for preservation or enhancement of air and or water quality
- Can provide for public access to natural wonders such as ocean, rivers, canyons, forests etc.
- Generates an extremely high dollar value amount of work for the accounting, legal, and appraisal professions in America
- Supports the continued employment of hundreds, if not thousands of Treasury Department – IRS workers in furtherance of tax compliance!

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What are the initial (specific) areas of concern in the IRS Conservation Easement Audit process?

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IRS Agents (Appraiser-Reviewers) are trained specifically to look for the following:

- Has the correct definition of fair market value (FMV) been applied under Treasury Reg. 1.170A-1(c)(2) ?
- Was a charitable contribution made under §170 (a)(1) ?

Conservation Easements



- Was a qualified Conservation Easement granted? § 170 (h)(1)
- Was the easement for an acceptable purpose? § § 170(h)(4)(a) and (h)(4)(b)
- Are substantiation requirements met?-Treas. Reg. 1.170A-13(c)(2)
- Appraisal summary in compliance? Treas. Reg. 1.170A-13(c)(4)

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- Proof of Contemporaneous Written Acknowledgement? 170 (f)(8) (form 8283)
- Qualified Appraisal attached to return? Treas. Reg. 1.170A-13(c)(3) and IRC 170(f)(11)(e)(ii)
- Qualified Appraiser? Treas. Reg. 1.170A-13(c)(5)

IRS Definitions



- **Internal Revenue Code (IRC)**
 - All federal tax laws. Originally written in 1939, thoroughly revised in 1954, and updated continuously since
- **Treasury Regulations (Treas. Reg.)**
 - Interpretation of the Internal Revenue Code

Definitions (continued)



- **Easement:**
 - An interest in real property that conveys use, but not ownership, of a portion of an owner's property.
 - ❖ The Dictionary of Real estate Appraisal, 3rd Edition, The Appraisal Institute
 - ❖ Façade Easements
 - ❖ Conservation Easements

Definitions (continued)



- Fair market Value (FMV)
 - Treas. Reg. 1.170A-1(c)(2)
 - ✦ “The price at which property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having a reasonable knowledge of the relevant facts.”
 - ✦ ***NOTE: There are numerous definitions of FMV in Treasury Regulations. It is critical that the correct definition be used related to the nature of the issue involved!***

Definitions (continued)



- **Charitable Contribution(s) §170 (a)(1)**
 - There shall be allowed as a deduction any charitable contribution [as defined in subsection (c)] payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

Definitions (continued)



- **Charitable Contribution §170, Section 170 (c)**
 - For purposes of this section, the term “charitable contribution” means a contribution of gift to or for the use of –
 - 170(c)(2) A corporation, trust, or community chest, fund or foundation –
 - 170(c)(2)(A) created or organized in the U.S. or any possession thereof, or under the law of the U.S., any State, the District of Columbia, or any possession of the United States;

Definitions (continued)



- **Charitable Contribution §170, Section 170 (c)**
 - 170(c)(2)(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

Definitions (continued)



- **Qualified Conservation Contribution**

- 170(h)(1) In general – For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution –
 - 170(h)(1)(A) of a qualified real property interest,
 - 170(h)(1)(B) to a qualified organization,
 - 170(h)(1)(C) exclusively for conservation purposes.

Definitions (continued)



- **Conservation Purpose**

170(h)(4)(A) In general – for purposes of this subsection, the term “conservation purpose” means-

(i) the preservation of land areas for outdoor recreations by or the education of, the general public,

(ii) the protection of relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farm and forest land) where such preservation is –

(I) for the scenic enjoyment of the general public,

(II) or pursuant to clearly delineated government conservation policy

Definitions (continued)



- (iv) the preservation of an historically important land area or a certified historic structure
 - Deed of easement is required
 - Baseline study by donor
 - Contemporaneous written agreement / acknowledgement
 - Mortgage subordination agreement

Definitions (continued)



- Conservation Purpose (Continued)
- 170(h)(4)(B)(i)(I) includes restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of building), and (ii) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior.

Definitions (continued)



- **Qualified Appraisal –**
 - Treas. Reg. § § 1.170A-13 (c)(2) and (3)
 - IRC § 170 (f)(11)(E)(ii)

Definitions (continued)



- Qualified Appraisal – Substantiation Requirements
- Treas. Reg. §1.170A-13(c)(2)*** a donor who claims or reports a deduction with respect to a charitable contribution*** must comply with the following three requirements:
 1. (A) obtain a qualified appraisal***
 2. (B) attach a fully completed appraisal summary***
 3. (C) maintain records containing the information contained in (b)(2)(ii) of this section

Definitions (continued)



- Qualified Appraisal
- Treas. Reg. §1.170A-13(c)(3)(i)
 - (A) *** an appraisal that is made not earlier than 60 days prior to the date of contribution***nor later than the date specified in ***
 - (B) is prepared, signed, and dated by a qualified appraiser (***)
 - (C) includes the information that is required by (c)(3)(ii) ***
 - (D) Does not involve an appraisal fee prohibited by paragraph (c)(6) of this section.

Definitions (continued)



- Qualified Appraisal
- **Treas. Reg. §1.170A-13(c)(3)(ii)**
 - This section contains eleven definitional requirements of a qualified appraisal –
 - See Next Slide

Definitions (continued)



- (ii) Information included in qualified appraisal. A qualified appraisal shall include the following information:
 - (A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
 - (B) In the case of tangible property, the physical condition of the property;
 - (C) The date (or expected date) of contribution to the donee;
 - (D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—
 - (1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,
 - (2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or
 - (3) Earmarks donated property for a particular use;
 - (E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;
 - (F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;
 - (G) A statement that the appraisal was prepared for income tax purposes;
 - (H) The date (or dates) on which the property was appraised;
 - (I) The appraised fair market value (within the meaning of §1.170A-1 (c)(2)) of the property on the date (or expected date) of contribution;
 - (J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and
 - (K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.
- (iii) Effect of signature of the qualified appraiser. Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c) (3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

Definitions (continued)



- Qualified Appraisal

- IRC § 170 (f)(11)(E)(ii)-

- ✦ Is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed***

Definitions (continued)



- **Appraisal Summary**

Treasury Reg. 1.170A-13(c)(4) For purposes of this paragraph*** the term “appraisal summary” means a summary of a qualified appraisal that-

- (A) Is made on the form prescribed by the IRS (Form 8283)
- (B) Is signed and dated *** by the donee***
- (C) Is signed and dated by the qualified appraiser *** who prepared the qualified appraisal***and
- (D) Includes the information required by paragraph (c)(4)(ii)

Definitions (continued)



- Qualified Appraiser-

- Treas. Reg. 1.170A-13(c)(5)

- ❖ An individual who includes on the appraisal summary, a declaration that-

- (A) The individual either holds himself or herself out to the public as an appraiser or who performs appraisals***
- (B) Because of the appraiser's qualifications as described in the appraisal,*** the appraiser is qualified to make appraisals of the type of property being valued;
- (C) *****
- (D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property *** may subject the appraiser to penalties under section 6701 and 6695A***

Definitions (continued)



- **Contemporaneous Written Acknowledgement**
 - 170(f)(8) Substantiation requirement for certain contributions-
 - 170(f)(8)(A) General rule- No deduction shall be allowed under subsection (a) for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B).

Definitions (Continued)



- **Contemporaneous Written Acknowledgement**
 - 170(f)(8)(B) Content of acknowledgement – An acknowledgement meets the requirements of this subparagraph if it includes the following:
 - ❖ 170(f)(8)(B)(i) The amount of the case and description (but not value) of any property other than cash contributed.
 - ❖ 170(f)(8)(B)(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in (i).

Definitions (continued)



- **Contemporaneous Written Acknowledgement**
 - 170(f)(8)(B)(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods and services consist solely of intangible religious benefits, a statement to that effect.
 - ❖ For purposes of this subparagraph, the term “ intangible religious benefit” means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside of the donative’s context.

Definitions (continued)



- **Contemporaneous Written Acknowledgement**
 - 170(f)(8)(C) Contemporaneous. – For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the taxpayer obtains the acknowledgement on or before the earlier of;
 - 170(f)(8)(C)(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or
 - 170(f)(8)(C)(ii) the due date (including extensions) for filing such return.

Closing Comments



- Use of *** and ***** indicates text omitted from the original source presentation .
- This presentation has been copied faithfully from that provided by Howard Kanter, GS-14 Lead Appraiser, IRS Appraisal Engineer Phase 2A Instructor from his presentations made in Brentwood, Tennessee in August, 2010. I have not knowingly left anything out. A very few small typographical corrections have been made to correct clear misspelling. No changes have been made to affect the meaning or (his) course content
- Users of this summary MUST understand that it was / is an abbreviated procedural training aid only. Substantial portions of very relevant Treasury Regulations; Internal Revenue Code (IRC) and the Internal Revenue Manual (IRM) are not included due to space constraints, and for purposes of instructional clarity of extensive information, that was presented in a very short period of time.
- This summarized information must not be solely relied on in personal tax planning, for appraisals or to determine if appraisers are “qualified”.
- Users of this summary must use the most recent versions of the Tax Code for tax related issues and planning. The intent of this summary being posted is to enlighten and point users in the right direction for necessary additional information.
- The code may be found in 26 U.S.C.A. § 170; IRC §170. A variety of governmental as well as private commercial sources such as Westlaw or the internet make specific sections available. The IRS website is also a helpful source of information at www.irs.gov
- **For ALL tax matter questions I urge users to contact qualified tax attorneys or accounting professionals that are experienced in the issues and areas of concern.**
- **For real property interest appraisals intended for IRS tax purposes, call me direct at 714 366 9404. That IS in my area of expertise!**