

A Guide to Preservation and Conservation Easements

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We can't count on governmental regulation to protect historically, architecturally and environmentally significant properties. Regulatory protection is generalized, not property specific and inconsistently enforced. Consequently, owners of significant properties become the primary stewards and protectors of their properties by necessity and proclivity.

But the role of property owners as stewards and protectors is increasingly compromised by financial considerations. Escalating property values are forcing many owners to make decisions regarding the future of the property. Should the property be sold? Can it be retained in the family? Often these decisions are driven by financial needs and estate tax concerns. Fortunately, the use of preservation and conservation easements provides a flexible option for owners who wish to preserve the historic, architectural, and natural resources of their property while addressing these financial and estate succession concerns.

WHAT IS A PRESERVATION EASEMENT?

A preservation easement is a legal agreement between the owner of a property and an organization or a governmental entity. The agreement governs the future use of and activities on a property, with the intention of protecting the property from inappropriate development. The agreement is incorporated in deed form because under the terms of the agreement the property owner is divesting himself of limited property rights and transferring them to the organization or governmental entity. Typically, the easement will prohibit demolition or alterations to a protected structure's significant features, changes in the usage of the property's buildings and land, and subdivision and topo-

graphic changes. The preservation easement is usually granted in perpetuity, is recorded in the land records for the jurisdiction in which the protected property is located, and applies to future owners. The property owner retains title to the property and continues to enjoy all rights of ownership except for those rights specifically restricted under the terms of the easement. The preservation easement does not necessarily permit public access to the property unless it is the specific desire of the property owner to include public access.

HOW DOES A PRESERVATION EASEMENT DIFFER FROM A CONSERVATION EASEMENT?

A preservation easement applies generally to the protection of culturally significant properties, such as buildings significant for their historic or architectural features. This is the type of easement that would commonly be used to protect a Frank Lloyd Wright designed building and its surrounding property. A conservation easement will protect environmentally significant and other open, undeveloped land that meets certain characteristics defined in federal regulations.

HOW DO PRESERVATION AND CONSERVATION EASEMENTS BENEFIT THE PROPERTY OWNER?

Donors of preservation or conservation easements derive immense personal satisfaction from knowing that the resources of the property for which they have cared will be protected for the use and enjoyment of future generations. Easements provide families with the opportunity to plan together for the future use of the property, thereby avoiding possible conflict and misunderstanding at a later time. As further described in the next issue of the Bulletin, property owners who donate preservation and conservation easements in accordance with federal and state rules may also be eligible for significant financial benefits through the reduction of federal income, gift, and estate taxes and through the reduction of town real estate taxes. ■