

As a Colorado landowner, are you thinking about donating a conservation easement to one of Colorado's certified land trusts or governmental entities?

First, make sure the organization you select to hold your easement is certified by the state.

- [Certified Conservation Easement Holders](#)

Only organizations on this list are eligible to accept a conservation easement that will be used by its donor to apply for a state income tax credit. Since certification is renewable annually, check with the land trust or government agency to make sure they'll be on this list during the year you make your gift.

Before you apply for the income tax credit, it's important to know that you will have to provide the state with a "qualified appraisal" containing the appraiser's opinion of the fair market value of the conservation easement. This term is defined by the IRS in its code and the related U.S. Department of Treasury regulations (see Internal Revenue Code at §170(f)(11), U.S. Department of Treasury Regulations at § 1.170A-13(c), and IRS Notice 2006-96) .

As required by state law, the Division of Real Estate examines each of these appraisals carefully to insure that they are "credible," and a tax credit is not issued until the appraisal is approved. There are other requirements you'll want to be familiar with before proceeding with your non-cash charitable contribution.

- [Requirements for your non-cash charitable conservation easement contribution](#)

Not every real estate appraiser has the necessary education, experience and training to prepare these complex reports. By selecting an appraiser who is competent in this specialized area, you are likely to save time and potential problems. While the amount of the professional appraisal fee is an important consideration, it is critical that the service and product you receive is reliable.

Many landowners select an appraiser based on word-of-mouth referrals from other easement donors, attorneys, accountants, or industry groups. These can be excellent sources of

information, but every landowner should take steps, before selecting an appraiser, to verify such information. Do not hesitate to ask for and then check references of any professional.

To help you, the landowner, select a properly qualified real estate appraiser, the Division of Real Estate offers several questions you may want to ask any appraiser before making the decision to retain her, or him.

## **The Basic and Very Important First Questions**

Do you have a Colorado Certified General appraiser license? Have you completed the conservation easement appraiser update course required by the state? Do you have errors and omissions insurance coverage? Please tell me about any other special training or certification you have.

All Colorado appraisers are required to maintain E&O insurance. An appraiser must also hold a Certified General appraisal license in order to perform these kinds of appraisals. And, effective January 1, 2017, any appraiser signing a qualified appraisal that will be used by a landowner as part of an application for the state tax credit must also have completed the Conservation Easement Appraiser Update Course. An appraiser who is not in compliance with these two minimum criteria cannot prepare an appraisal of a conservation easement for a state tax credit.

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### **Have you appraised one or more conservation easements in Colorado?**

While every experienced easement appraiser once undertook their first conservation easement appraisal assignment, you may want to work with an experienced appraiser. If your property is in an area where you cannot locate a suitable experienced easement appraiser, consider retaining a really good local appraiser familiar with your market and your type of property, and ask that they work with an experienced easement appraiser. This can be handled with a consulting agreement between the two appraisers, or the local appraiser can ask you to retain the easement appraiser as

a peer reviewer. Any appraiser who signs a qualified appraisal of a conservation easement for a state tax credit must hold the Certified General license and must have completed the Conservation Easement Appraiser Update course.

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Have you ever completed a conservation easement appraisal that resulted in a denial of a landowner’s tax credit application? Have you been subject to any Board of Real Estate Appraisers disciplinary action, either in Colorado or any other state?

An affirmative answer to either or both of these questions need not disqualify an appraiser from consideration, but you should get more information about underlying circumstances. As a consumer, you have a right to get clear answers. If necessary, you can always ask the Division of Real Estate to provide you with any public records of disciplinary action concerning a specific appraiser.

- [Open Records Request](#)
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Have you worked on properties like mine in this part of the state?

Many real estate appraisers specialize in one or just a few counties, and in certain types of properties. Other appraisers travel widely and are comfortable handling several different types of property. Professional appraisal standards require only that appraisers be “competent.” This means that the appraiser must be able properly to identify the appraisal problem to be solved, must have the necessary knowledge and experience to complete the assignment, must recognize, and must be able to comply with any laws and regulations that apply to the appraiser or to the assignment. Preparation of conservation easement appraisals used in support of federal income tax deductions or state income tax credit applications require thorough understanding of the property type and appropriate valuation techniques, as well as extensive

familiarity with the parts of the Internal Revenue Code and U.S. Department of Treasury regulations referenced above.

### What information will you need to prepare my appraisal?

The answer you receive to this question will give you a lot of information about the appraiser! Experienced appraisers request a long list of material, including a current title insurance commitment and copies of (or links to) recorded exception documents; maps, surveys and/or land use planning documents; water rights information, if any; oil & gas production data; vesting deed(s) for the property; a copy of the proposed conservation easement, and a copy of the baseline documentation report that must be prepared in connection with the easement. You should be prepared to provide all of this material. It is not unusual, especially with land that has been under ownership of the same family for many years, for the landowner or her representative to have to engage in some housekeeping activities before an easement can be conveyed. You may need to clear title to part of your property or document fenceline/boundary discrepancies. One of the most common issues that appraisers have difficulty with is documentation of legal access to a subject property from a public road.

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### My family owns other land that will not be going under the conservation easement. Does this matter?

Yes!

Treasury regulations require that all contiguous land owned by the easement donor or members of the donor's family be appraised, even if only a small piece of one family member's land is to be encumbered. Further, if the easement donor or members of his family have interests in partnerships, limited liability companies or other entities that own land, the appraiser may have to prepare separate appraisals of this other property. The appraiser may need to obtain advice from competent tax counsel, from the family's accountant, or others. This may be an additional expense, but it is

important that the correct property(ies) is selected for the appraisal assignment.

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Can you prepare a preliminary appraisal of my conservation easement? I don't want to spend all this money unless I know it will be worth it!

Appraisal standards define an appraisal as “the act or process of developing an opinion of value; an opinion of value...” Every time an appraiser provides a client with an opinion of value, either written or verbal, the appraiser must comply with professional standards. This means the appraiser must do substantial research and analysis before providing a value opinion. There is no such thing as a “preliminary” appraisal. However, there is nothing that prevents an appraiser from providing a client with one or more draft appraisals, so long as a draft is not used to enable or encourage the appraiser’s client to try and influence the appraiser.

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***Conservation easements are enforceable in perpetuity, and should be evaluated carefully. Nothing in this guidance replaces information you should ask for and receive from professionals retained by you to assist with the drafting, donation, and substantiation of the conservation easement and the appraisal.***