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AMHERST

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## **Frequently Asked Questions About Conservation Restrictions**

### **1. Will I still own my property under a Conservation Restriction (CR)**

Yes. The CR allows the property owner to retain title, pass the property on to heirs or even sell the property.

### **2. How long does a Conservation Restriction last?**

CRs are placed on a property to last forever, legally known as “in perpetuity.” CRs are legally binding covenants binding current and all future owners of the property placed under a CR. The restriction is recorded in the Registry of Deeds in the form of a deed. Any title search of a property will reveal the existence of a CR and all future owners will be bound by it.

### **3. Is an easement all or nothing? Does it have to apply to all of my property?**

No, a landowner can determine which part or parts of their property would be restricted in the future by the easement. It is quite possible, or even common, to withhold some land (perhaps a building lot or two for the kids?) from the easement, and yet protect the remainder of the property from development (this is an example of conservation-based development). The details of what rights are restricted and what are permitted, and where these restrictions will apply, are worked out between the landowner and the holder of the easement when drafting the CR.

### **4. What are the advantages of a CR?**

When a landowner places a property under a CR, he or she has permanently protected that property. The restrictions placed on the property through the CR allow the landowner to determine how the property will be used into the future. In addition to knowing the property will remain protected against development, the owner can derive tax benefits from the CR. These can include reduction of federal income taxes (if the CR is donated), reduction of estate or inheritance taxes, and possible deduction in real estate taxes.

## **5. Can I still reside on my land after an easement has been placed?**

Yes. In most cases, a CR will exclude the building site from the area covered by the CR. The CR restricts those uses such as subdivision and development, which are described in the CR. The owner continues to own and use the land as permitted by the CR terms. If you think you might want to build an additional building or two, then those future building sites will not be included in the area affected by the CR. If desired, easements may be written to provide for specific limited development of a property, such as additions or modifications to existing structures, home sites for children, and farm structure construction.

## **6. How can granting a CR reduce a property owner's estate tax?**

Federal estate tax is levied on the fair market value of the “highest and best use” (development), not on the value of the property for its existing uses. The resulting estate tax can be so high that the heirs must sell the property to generate enough cash to pay the taxes. A CR, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual CR before death or by including the CR in a will, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate will be less, and the estate will thus be subject to a lower estate tax, or possibly no estate tax at all. In addition, if the property must be sold, the CR will conserve the property in perpetuity.

## **7. How can donating a CR reduce a property owner's income tax?**

The donation of a CR is a tax-deductible charitable gift, provided that the restriction is perpetual and is donated “exclusively for conservation purposes” to a qualified conservation organization or public agency listed under Section 501(c)3 of the Internal Revenue Code. Further qualifications exist under Internal Revenue Code Section 170(h) which generally defines “conservation purposes” to include the following:

- the preservation of land areas for outdoor recreation by, or for, the education of, the general public,
- the protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems,
- the preservation of open space - including farmland and forest land - for scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit, and
- the preservation of historically important land areas or buildings

A donation need only fit into one of these categories to qualify. To determine the value of the CR donation, the owner has the property appraised both at its fair market value without the conservation restrictions and at its fair market value with the conservation restrictions. The difference between these two appraised values is the CR value. Detailed federal regulations govern these appraisals.

## **8. Must an easement open my land to public access?**

No. The land is still privately owned, and the CR-holding organization is responsible for monitoring the conservation values of the property. If the landowner does wish public access for educational or environmental recreation, the restriction can be written to allow for this. The value of the easement can be influenced by the right of the public access. If public access is allowed, the easement may have a higher appraised value, giving you more potential tax benefit. Some public agencies may insist on public access.

## **9. Can I still practice forest management and agriculture on land under a CR?**

Yes. Specific property uses such as forest management, cutting firewood, building trails and agricultural practices can be outlined in the CR. Including these specific uses into a CR does not mean that you are obligated to do them, only that you reserve the right for yourself and all future owners to engage in these activities. Work with a land trust or government agency that supports forest management and agricultural uses. Private foresters with land conservation experience are excellent local resources to help you identify conservation organizations with missions compatible with your landowner goals and to help you develop forest management language for the CR.

## **10. Can granting an easement reduce an owner's property tax?**

Property tax assessment usually is based on the property's market value, which reflects the property's development potential. If a CR reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner's property taxes. This is unlikely if the property is already valued with a preferential tax assessment which relates to woodland use (Ch. 61), farmland (Ch. 61A) or open space (Ch. 61 B).

The actual amount of property tax reduction, if any, depends on many factors. State law and the personal attitudes of local officials and assessors may influence or determine the decision to award property tax relief.

## **11. Is there any cost to me in placing my property under conservation easement?**

Yes. There are some costs accrued by the landowner in placing a CR on a property. These include:

- the costs of legal counsel
- an appraisal necessary for IRS purposes
- survey costs only if a portion of the property not clearly defined in a legal description is to be placed under easement
- Recorder's fee
- Possibly, an endowment to monitor and defend the easement.