

Colorado Historical Foundation Preservation Easements Program

Saving Buildings While Saving Taxes

A preservation or conservation easement is a way to ensure the continued preservation of historic buildings, sites, structures and even archeological ruins. The donation of such easements is a purely voluntary means for property owners to preserve these important landmarks while being able to realize what may amount to substantial tax savings as a result of the donation.

An easement is a partial interest or limited right in the use of a property, which is legally granted by the owner to another party. A familiar example of an easement is a right-of-way. When a property owner grants a preservation or conservation easement (the terms are often interchangeable) the owner is not, however, giving a neighbor the right to cross his or her land, as with a right-of-way. Instead, the owner grants to an organization like the Colorado Historical Foundation the right and, in fact, the obligation to assure that the property's historic character is forever preserved.

The donation of a preservation easement does not mean that the property owner surrenders ownership of the property, nor does it prevent the future sale of the property. A preservation easement on a historic building does mean that it cannot be demolished, that any changes to the exterior appearance of the property must be approved by the Foundation, and that it must be maintained in good condition.

A preservation easement may be given on any property that is either listed on the National or State Registers of Historic Places or designated as a local landmark. An owner of an historic property may grant an easement on just the exterior of a building, in which case it is often called a facade easement, or the owner may elect to have the easement cover the interior as well. Conservation easements may also be given on open land surrounding a historic site or structure to ensure that this land is not inappropriately developed.

All preservation easements are granted in such a way that they "run with the land" and are passed on to all future owners of the property. An easement does not prevent an owner from selling the property nor does it require that it be open to the public.

An owner may well ask "What's in it for me?" In addition to the satisfaction derived from knowing that your historic property will always be preserved, the owner may also receive a tax deduction. According to section 170 of the Internal Revenue Code, the donation of a preservation easement on property listed on the National Register of Historic Places can qualify as a charitable deduction for Federal income, estate and gift tax purposes. The amount of that deduction is equal to the reduction in the property's fair market value as a result of the easement. Although valuation and the resulting tax savings can become very complex to determine, property owners may save substantially on their taxes. It is always best to consult a tax attorney or accountant whenever considering the donation of a preservation easement.

In order for a preservation easement donation to qualify as a charitable deduction, the easement must be granted to what the IRS calls a "qualified organization". The Colorado Historical Foundation is one such organization and is unique in its ability to accept easements anywhere in Colorado. The Foundation is a private, non-profit organization that has had a close association for many years with the Colorado Historical Society, the Foundation has been accepting preservation easements since 1981. It now maintains a portfolio that includes easements on properties ranging from small farmhouses to large hotels in areas from Durango to Denver to Estes Park.

Preservation easements are an effective means to protect and preserve historic properties. In areas without local landmark commissions, easements may be the only way to assure the continued preservation of a valuable historic property. And easements are a purely voluntary means of preservation. The Colorado Historical Foundation's Preservation Easement Program presents a unique opportunity for an owner of a historic property to help his or her community to save its heritage while possibly realizing tax savings.

NOTE: Property owners who are considering the donation of a preservation easement should seek the counsel of their own tax advisors, accountants and lawyers to determine the manner in which the donation will affect them and their tax liability.

Questions and Answers

What Properties Qualify?

A preservation easement can be granted for any property that has received official historic designation, including listing on the National or State Registers of Historic Places or as a local Landmark by a municipal or county government. However, in order to qualify as a tax deductible easement donation under section 170 of the Internal Revenue Code, the property must be listed either individually on the National Register of Historic Places, or located within National Register Historic Districts and certified as contributing to the historic character of that district. Many local landmarks and many older buildings not presently listed on the National Register may qualify as National Register eligible buildings.

What Restrictions Are Placed on the Property?

The Colorado Historical Foundation has developed a standard deed of easement that specifies the mutual obligations of both the owner and the Foundation. The basic restrictions of the deed relate to alterations and modifications of the building and to the development of any land covered by the easement. Alterations and in some cases even additions may actually be permitted under the terms of an easement. However, in all cases such alterations require the prior approval of the Colorado Historical Foundation. The easement deed also requires the owner to maintain the property in good and sound condition. Copies of the Foundation's standard deed of easement are available upon request.

Are There Any Direct Costs to the Easement Donor?

Yes. In order to cover its costs, the Colorado Historical Foundation charges a flat fee of \$250 for processing applications as well as a \$1500 fee for negotiating each easement. In addition, a contribution to the Foundation's Preservation Easement Endowment Fund is required for every easement accepted. The purpose of the contribution is to cover the continuing costs of enforcing the terms of each easement. The amount of the required contribution is based on a sliding scale that is tied to property value. (See the Foundation's Policies and Procedures for fee schedule.)

How Long Does an Easement Last?

In order to qualify for the tax deduction, federal law requires that preservation easements be granted in perpetuity. As with any deed, the easement is recorded in the county land records and "runs with the land". The easement binds the owner who grants the easement as well as all future owners.

Must an Easement Property be Open to the Public?

No. Unless an interior easement is granted, no public access to the property's interior is required. Section 170 of the Internal Revenue Code does require, however, that in order to qualify for the tax deduction the exterior of the property must be visible from a public right-of-way.

How is the Value of an Easement Donation Determined?

The value of the easement is determined by the decrease in the property's fair market value attributable to the easement. This is calculated by subtracting the property's fair market value after the granting of the easement from the fair market value before the easement was donated. These calculations require the services of a professional appraiser, who is hired by the donor to determine the easement value.

For copies of the Colorado Historical Foundation's application form, standard deed of easement, policies and procedures governing the donation of easements, or for other general information on the Foundation's preservation easement program, please see the Foundation's web page at www.cohf.org or contact:

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