

Conservation Easements

What is a Conservation Easement?

A conservation easement is a legal tool that you may use to protect the natural values of your land, while continuing to own and use the property. It is an agreement between a landowner and a land trust or government agency, that permanently limits uses of the land (or a part of it) to protect its conservation values. The easement becomes part of the property deed, so the restrictions apply to whoever owns the land in the future. The organization or agency holding the agreement ensures that all future owners look after the land in the way that you set out in your agreement.

Why Grant a Conservation Easement?

A conservation easement is one of the strongest enforceable levels of protection that you can place on part or all of your property. By granting an easement in perpetuity, you can be assured that the natural values of your property will be protected indefinitely, no matter who the future owners are. An easement also allows you retain ownership of the land, so you can continue to use the land, and sell it or pass it on to your children. Donating an easement may provide income and/or property tax benefits for your and your family. You can also use an easement in combination with selling or donating land. This gives you control over use of the land, even after you no longer own it.

What Kind of Property is Eligible?

Any land with significant natural values can be considered for an easement, from forests and wetlands to beaches and scenic areas. To be eligible for a conservation easement, your land must be designated as a “natural area” by order in council. Application is made through the Department of Natural Resources. To be eligible for designation the land must support:

- natural ecosystems;
- habitat of rare, threatened, or endangered plants or animals;
- unique botanical, zoological, geological, morphological, or palaeontological features;
- exceptional and diversified scenery; or
- a haven for a concentration of birds and animals

How Restrictive is an Easement?

Generally, restrictions placed on the property are intended to protect the natural, scenic, aesthetic and cultural features against intentional or inadvertent destruction. Although easements must protect the land's conservation values, they are also flexible and can be tailored to meet each landowner's financial and personal needs. Easements permanently limit some uses of the land, but they can allow appropriate development and commercial uses of the land. For example, an easement may allow building a new home or retaining the right to grow crops, as long as the activities do not harm the protected values of the land. You may continue to use and enjoy the land the same way as you always have. An easement can apply to an entire property, or a portion of it, such as the land along the shore of a lake or river.

What is Involved in Donating an Easement?

Once you decide that you are interested in donating a conservation easement, the first step is to find an organization or agency interested in holding the easement, and discuss your interests with them. Several steps must then be completed by the grantee agency or organization to put the easement in place:

- a title search
- legal description and plan of the property
- designation of the land as a “natural area”
- registration of the “natural area” (registry of deeds)
- detailed baseline documentation of the land
- drafting of an easement agreement
- signing of the easement
- registration of the easement (registry of deeds)

We also recommend that you obtain your own legal and financial advice before signing a conservation easement.

Who Can Grant an Easement? To Whom?

Any owner of property with conservation value may grant an easement. If the property belongs to more than one person, all owners must sign the easement agreement (including spouses). If the property is mortgaged, the owner must obtain an agreement with the lender to ensure that the easement is not affected by the mortgage.

Organizations and agencies authorized specifically to hold conservation easements in Nova Scotia include:

- Blomidon Naturalist Society
- Bras d'Or Preservation Foundation
- Ducks Unlimited Canada
- Federation of Nova Scotia Naturalists
- Kingsburg Coastal Conservancy
- Nova Scotia Nature Trust
- Nature Conservancy of Canada
- Minister of Natural Resources

What are the Grantee s Responsibilities?

The organization or agency holding the easement is responsible for enforcing the restrictions included in the easement document. They monitor the property on a regular basis, typically through a yearly visit to the site with the landowner, and ongoing written records of these visits. If the easement is violated, they have the legal right to require correction of the violations and to restore the property to its prior condition.

Since holding an easement is a great responsibility, you should make sure that the recipient organization has the time and resources to carry out that responsibility.

Do Easements Provide Income Tax Breaks?

The donation of a conservation easement to a registered conservation charity or the government is a tax-deductible charitable gift, so you receive a receipt for income tax purposes. Its value is generally the difference between the fair market value of the property before and after the conservation easement is applied, and varies according to the types of restrictions placed on the land. Detailed federal regulations govern these appraisals (see the Nature Trust's [Land Conservation: Financial Facts](#)).

A conservation easement, made during your lifetime or in your will, may reduce taxes for you or your heirs since it restricts the uses of property, and thus its market value. In this way, a conservation easement can be essential for passing your land on to your children and helping them to keep the land intact. Otherwise, your children, like many heirs to large properties, may face high capital gains taxes because the land is worth much more now than when you acquired the land. Even if they wish to keep the property in its existing state, they may be forced to sell the property to pay these capital gains taxes.

Do Easements Provide Property Tax Breaks?

Placing a conservation easement on your property may influence your property taxes. The assessed value of your property is its market value (the amount a willing buyer would pay to a willing seller in an open market). The taxes payable are usually determined based on the assessed value. The tax rate depends on how it is used. For example, property classified as "residential" is taxed at a particular rate (for example, \$2.00 per \$100 of assessed value). The rate is set by the municipality. Property classed as "forest resource" is taxed at a set rate of \$0.25 per acre.

Some conservation easements, such as forever wild easements, may lower the market value of a property, because they prohibit most land-altering activities. This should reduce the assessed value, and therefore reduce property taxes. But conservation easements allowing some "development" may actually increase the value of a property to some buyers, and could lead to higher property taxes.

Since a conservation easement restricts activities and uses of the land, it may also affect the classification of a property. For example, land under a conservation easement may no longer be used for forestry purposes. It may be reclassified from "forest resource" to "residential" and taxed at a higher rate. If the land is reclassified, you may need to pay a change-in-use tax of 20% of the assessed property value (conservation groups are working to ensure that conservation easements do not increase property taxes or trigger change-in-use-taxes).

The actual influence on your specific property taxes depend on many factors. You (and/or the agency or organization you are working with) can contact the Department of Housing and Municipal Affairs to find out specific information for your easement plans.
