

METHODS OF LAND PRESERVATION

There are a number of ways to donate or sell land while protecting its natural resources. The challenge is to find the method that best suits the landowner as well as the requirements of the organization or agency that will acquire the land.

Private landowners often choose to donate or sell valuable open space to a government or private conservation agency in order to acquire a tax deduction or to be sure the land is managed and protected in the best way available.

If you have land which you are thinking about conserving, please contact the Tri-Valley Conservancy to discuss your needs and desires. Note that each situation is different and TVC will work with you to try to achieve your goals.

SALE OF PROPERTY

SALE AT FAIR MARKET VALUE

Sale at fair market value is the sale of property for the price a knowledgeable buyer will pay for the land. However, two major considerations should be kept in mind. Most conservation agencies are often unable to purchase land at fair market value as they have insufficient funds available for the buying of land and must be particular about their purchases. Therefore, the opportunities to sell at fair market value are limited. Also, if your land is sold for its full value and has appreciated in value since its purchase, you will be liable for income tax on the capital gain. This can significantly affect your net profit from the sale. However, there are alternatives.

BARGAIN SALE

In a bargain sale, a government agency or charitable conservation organization purchases your property for a price less than fair market value. By offering the property at a lower price, you are more likely to find a willing buyer as most land preservation organizations have limited funds.

You can claim a charitable contribution deduction on your income tax for the difference between the bargain price and the fair market value. This deduction, together with the smaller capital gains to be taxed from the reduced selling price, can offset some of the monetary loss caused by not selling at fair market value.

INSTALLMENT SALE

An installment sale allows an agency to purchase property over a period of several years. The use of the land and the responsibility for payment of property taxes until the sale is complete are negotiable terms of the agreement.

You benefit financially by spreading the income and the taxable gains over several years. The amount of taxable gains depends on whether the land is sold at fair market value or not.

SALE WITH A RESERVED LIFE ESTATE

If you sell property with a reserved life estate to a landholding agency, you and your family may continue to use the land during your lifetime or their lifetimes. You will have to continue to pay the real estate taxes on the land while retaining use of the property. Capital gains will depend on whether or not the sale is at fair market value.

TRANSFER OF TITLE WITH CONDITIONS ATTACHED

CONSERVATION EASEMENTS

A conservation easement protects the property against the destruction of natural resources or open space by setting limitations on the use of the land. Conservation easements usually are permanent and apply to all future landowners. Easements are either granted or sold to a qualified public or private organization that will be responsible for the long-term enforcement of the easement prior to the transfer of property.

By restricting some of the future uses allowed on the property, you may reduce the value of the land on the open market and should expect a lower price for the property if sold. However, the loss may be deducted as a charitable deduction for income tax purposes. If the land is donated to a qualified charitable organization or government agency, you may still deduct the value of the land, after the easement, as a charitable contribution. (See *Donations* on following page.)

The prior granting of a conservation easement provides an excellent way to control the future use of the land. However, other types of limiting conditions should be considered when land is being transferred to a conservation organization or agency. In these situations, an easement may not be necessary since groups are experienced in managing and protecting land.

DEED RESTRICTIONS

Restrictions guiding the future use of your property may be placed in the deed at the time the property is transferred. Deed restrictions vary from conservation easements as there usually is not a third party assuming the monitoring and enforcement responsibility. Deed restrictions may be appropriate if the land is being transferred to another landowner or to a landholding agency.

One method to ensure that deed restrictions are enforced after the property is transferred is to transfer the land to a conservation organization or agency, then have them include the deed restrictions before they sell. The conservation agency then holds the right to enforce the covenants, not you. A conservation agency is better able to

enforce the restrictions since a major focus of such an organization is to manage and protect environmentally valuable land. Make sure the conservation group or agency is willing to insert and enforce the restrictions in the deed prior to selling the land to them.

Deed restrictions will usually affect the market value of the land if they significantly limit development potential. The presence of restrictions may lower the price if the property is sold or lower the value of the gift if the land is donated to a conservation agency.

The IRS does not allow you to claim the loss in value resulting from deed restrictions as a charitable deduction. This is an additional reason to donate the land to a conservation agency and have the agency insert the deed restrictions. By doing so, you can claim the entire fair market value of the land as a charitable contribution.

CONDITIONAL TRANSFERS AND REVERTER CLAUSES

A conditional transfer gives more force to a deed restriction. If the restrictions entered in the deed are violated, title to the land will revert automatically to the original landowner and heirs or be transferred to a conservation agency depending on who would be in the best position to protect the land and enforce the restrictions. Thus the penalty in this situation is much greater; the owner can lose the title to his or her land if the restrictions are not adhered to.

The loss in value to your land resulting from conditional transfers may allow you to claim the transfers as a charitable deduction if they are donated to a qualified organization or agency. As stated previously, restrictions may reduce the value of a gift, therefore you may want to transfer your land prior to placing restrictions on **it**, to a qualified agency or organization who will then place restrictions on the land. The result is a maximum income tax deduction for you and long-term protection of the land.

DONATIONS

OUTRIGHT DONATION

Giving the land to a nonprofit conservation organization or to a government agency is the simplest way to protect your land. No financing or negotiations about price are necessary. However, you must obtain approval from the agency or organization to whom you intend to donate prior to deeding the land to them. Once the land is under the protection of a land conservation agency, its long-term preservation should be guaranteed. You also may receive tax benefits in the form of federal income tax deductions, potential estate tax benefits, and relief from property taxes.

If you wish to donate land but do not want to give up the use of **it** immediately, you have two options to choose from donation by will or donation with a reserved life estate.

DONATION BY WILL

A gift of land may be made through a will entitling you to retain full use of the land during your lifetime. Discussing the gift with the government agency or private conservation organization prior to inclusion of the donation in your will allows you to develop a plan for the future care of your land. You will retain full control over your land during your lifetime, and you are assured that **it** will be cared for when you are gone. Removing the land from your estate reduces the estate or inheritance taxes. However, you will still be responsible for paying real estate and income taxes for the entire property during your lifetime.

DONATION WITH A RESERVED LIFE ESTATE

To avoid paying real estate and income taxes for the full property during your lifetime, you might consider a donation with a reserved life estate. With this option, you donate the property to a government or conservation agency, while you and the other members of your family retain the use of all or part of the land during your lifetime or their lifetimes. A reserved life estate ensures that your land is accepted by someone suitable to you and is protected in perpetuity, yet you may continue to reside on **it**.

If the donated land qualifies for treatment as a charitable deduction, you may take an income tax deduction for the value of what was actually given up. This value, and hence your deduction, is determined by the Internal Revenue Service actuarial tables based on the life expectancies of those who have a reserved life interest in the property. This deduction would not include the value of the retained life estate. The tax advantages with a retained life estate are less than those advantages with an outright donation, but greater than those with a donation by will.

(This is a separate little note)

Donations by will or with a reserved life estate may be preferred if the organization or agency receiving the land would like to own the property but does not wish to accept the responsibilities of immediate ownership.

RETAINING OWNERSHIP

CONSERVATION EASEMENTS ~

Owning land is similar to owning a bundle of rights. With a conservation easement, the landowner gives away some of the rights, such as the right to subdivide, to cut down trees, or to build on the property, in order to protect the natural aspects of the land.

A conservation easement enables the landowner to protect the land in perpetuity while retaining ownership. If you place an easement on your land, you may continue to use the land just as you have in the past as long as the use does not conflict with the terms of the easement. In addition, you can also sell, lease, or convey the land subject to the explicit

terms of the easement. The responsibilities and rewards of ownership continue, and unless you specify otherwise, you still retain full control over public access.

A conservation easement is created to suit your needs - to protect the land as you wish and to allow the activities that you want on your land. Easements are often written to encourage good agricultural and forestry practices and prohibit or limit development or commercial use of the land that would disturb the natural qualities of the property. The conservation easement does not have to protect the entire property but may include only the portion that you choose to protect. The easement can cover a few acres or several thousand acres.

Landowners grant conservation easements primarily to protect land that they value and that will be important for its natural attributes in the future. However, the financial benefits of granting a conservation easement in perpetuity can be significant.

A conservation easement donated to a qualified agency is not tax deductible unless its purpose is to protect land for conservation. To the IRS, conservation means the land under easement is protected for the public good - for the preservation of significant wildlife habitat, open space, farmland, or watershed.

An easement usually decreases the market value of the land as it limits the potential development and use of the property. This reduction in market value can reduce estate and inheritance taxes. Frequently, heirs who have inherited the family lands must sell all or a portion of the property to pay the estate or inheritance taxes. However, if, due to a conservation easement, the market value of the land has been reduced prior to the time of death, the estate taxes will also be reduced. Granting a conservation easement can be important for your heirs as well as for the future of the land.

During your lifetime, a conservation easement donated to a charitable organization can be claimed as a deduction on your income taxes. In contrast, if the easement is sold, the amount you receive as payment would be taxed by the IRS. In either case, there may also be a property tax benefit. Easements will affect the fair market value of the land.

MUTUAL COVENANTS

Instead of involving a conservation agency, a mutual covenant involves only the nearby or adjacent landowners who are interested in protecting their land. The landowners would enter into an agreement controlling the future use of their land through restrictions agreed upon by all the participating landowners. Such agreements are permanent and could be enforced by any of the landowners or future landowners of the involved properties.

Mutual covenants differ from conservation easements in a couple of ways. First, it would be a person or a group of people rather than a conservation agency or organization enforcing the restrictions. Knowing that all their neighbors are aware of what can or cannot be done on their property is usually enough to keep landowners from breaking the

terms of the agreement.

Also, there are the financial considerations: mutual covenants can reduce property taxes and estate taxes. The local assessor may use them, and the appraiser may take them into account when determining the value of an estate at time of death. However, the loss in market value from mutual covenants cannot be claimed as a charitable deduction on income tax returns.

LEASES

Leases are rental agreements. They provide an alternative if you do not wish to transfer your land to a conservation agency or organization but want to see it used or protected by such a group for a period of years. A land management agency pays rent to you for the temporary control of your property - a lease allows unrestricted and exclusive use of the land by the agency for a given number of years. Certain use restrictions can also be incorporated within the lease. Moreover, you can include provisions that terminate the lease if the conservation group does not use the property as directed.

Even if rental payments are not received for the use of the land, there may be other financial incentives that accompany the leasing of land. Although it is not possible to take a charitable deduction for the value of a lease that is donated, any impact of the lease on the value of the land would be taken into account when estate taxes are calculated.

MANAGEMENT AGREEMENTS

A management agreement is a legal contract between you and a conservation organization requiring you to manage the property in a specific way for a determined amount of time. A management agreement is good for landowners who have already been managing their land for conservation purposes. Frequently, management agreements are voluntarily granted by landowners and are designed to suit both parties.