



Guide to Donating a Preservation Easement

Cincinnati Preservation Association is pleased at the opportunity to work with you to protect your historic building via a Preservation Easement. In this document you will find

- 1) Steps to Donating a Preservation Easement
- 2) Taking a Tax Deduction
- 3) Preservation Easement Stewardship

Steps to Donating a Preservation Easement

Date Completed	Steps	Description
	Initial contact	Property Owners(s) meets with the Cincinnati Preservation staff to discuss the property to determine preservation goals.
	Site visit	Walk your property with Cincinnati Preservation Staff to discuss your goals and the options available to you for preserving your land.
	Submit Application	If after initial consultation you want to proceed with an easement, submit a Preservation Easement Application with the required application fee. This application is available at our website or from staff.
	Application Review and Base Research	Staff reviews the application for eligibility and if the property is not listed on the National Register will submit the property to the State Historic Preservation Office for determination of eligibility. If the property is not listed and the property owner wants to receive a tax deduction for their donation, the property will need to be listed on the National Register prior to the tax deduction being approved.
	Discuss Easement Terms	Meet with Cincinnati Preservation to discuss the rights and restrictions that would like to be included in the deed of Preservation easement.
	Advocacy Committee Approval	Project is evaluated by Cincinnati Preservation Advocacy Committee to determine if it meets preservation purposes and whether staff should continue work on the project.

	Easement Draft	The Cincinnati Preservation prepares a draft preservation easement for review by the property owner and the property owner's attorney.
	Appraisal	<p>Obtain a written appraisal from a qualified appraiser in order to determine the value of the preservation easement donation. The charitable donation of a preservation easement may qualify for a tax deduction, if IRS regulations are satisfied.</p> <p>The Internal Revenue Code 170 outlines appraisal requirements that the donor must satisfy in order to qualify for a tax deduction:</p> <ul style="list-style-type: none"> • that a written qualified appraisal be prepared by a qualified appraiser (one who follows Uniform Standards of Professional Appraisal Practice); • that the appraisal cannot be made earlier than 60 days before the preservation easement closing; • that the easement donor has the responsibility for obtaining above appraisal and for providing a copy to Cincinnati Preservation for review at least 5 days prior to the scheduled closing.
		Cincinnati Preservation will not knowingly participate in preservation easement projects where it has significant concerns about the appraisal values or the tax deduction. If you hope to take a tax deduction for a preservation easement donation, you may wish to obtain financial advice from your tax advisor and/or accountant. It should be noted, if no tax deduction is desired, no appraisal is needed and the donation fee required will be based on the current County Auditors valuation.
	Survey	<p>If your property has not been surveyed recently or if you are considering a change to the current boundary survey, a qualified land surveyor should survey the property prior to the final appraisal.</p> <p>Provide a copy of the survey to Cincinnati Preservation.</p>
	Title search and insurance	Have your attorney prepare a title search and a title insurance binder for the preservation easement.
	Additional property. owner due diligence, as necessary	If there is a mortgage or lien on the property, your mortgagor must sign a document subordinating the mortgage to the preservation easement; and all other liens, such as a life estate or leases must be subordinated to the easement

	Baseline Documentation Report	Cincinnati Preservation staff prepares a baseline documentation report that documents -with text, photographs and maps - the preservation values of the property, its history, and its current conditions. Staff will provide a draft to the property owner for review and comment.
	Preservation Easement Fund	A donation to the Preservation Easement Fund is required to support the future costs of permanently monitoring and enforcing of your preservation easement. This fee is required prior to or at closing.
	Finalize and record documents	Sign the Deed of Preservation Easement and the Preservation Easement Baseline Documentation, which records the condition of the property at the time of donation.
	IRS form 8283	Obtain IRS Form 8283 from your accountant in order to apply for a tax deduction. The completed form should be signed by the appraiser and Cincinnati Preservation Association.

The donation of a Preservation Easement often qualifies as a charitable contribution, allowing the donor to take a federal income tax deduction for the value of the contribution. The following summarizes some specific Internal Revenue Service rules governing these contributions. All of this is provided for informational purposes and Cincinnati Preservation Association highly suggests you talk to your legal, accounting, and financial advisors.

Tax Incentive to Help You Preserve your property.

If you own a historic building, donating a voluntary preservation easement agreement can be one of the smartest ways to preserve the property and building you love, while maintaining your private property rights and possibly realizing significant federal tax benefits.

The incentive:

- The maximum deduction you can take for donating a voluntary preservation easement is 50% of your adjusted gross income (AGI);
- Allows the deductions to be carried up to 15 years.

Arranging for an appraisal

To claim a deduction, a landowner must obtain a qualified appraisal of the preservation easement from a qualified appraiser.

What is the purpose of an appraisal?

A preservation easement appraisal may have several uses. For charitable contribution purposes, the appraised value of the easement is used to determine the amount of any income tax deduction available. In this case, the appraisal procedure and report must conform to specific IRS standards noted below. An appraisal may also be important for estate planning or in reviewing value for property tax purposes. Additionally, an appraisal may be used to substantiate the purchase price of a purchased easement.

Is an appraisal required?

An appraisal is not always necessary. However, a landowner is required to obtain a qualified appraisal if the landowner is donating a preservation easement valued over \$5,000 and intends to seek a federal charitable income tax deduction for the gift. A landowner may also need an appraisal to obtain a mortgage subordination, to support a request for a property tax adjustment or to receive payment in exchange for the easement.

What is a "qualified appraisal"?

The Internal Revenue Code 170 outlines appraisal requirements that the donor must satisfy in order to qualify for a tax deduction:

- that a written qualified appraisal be prepared by a qualified appraiser (one who follows Uniform Standards of Professional Appraisal Practice) (These standards can be found on the web site of the Appraisal Foundation, www.appraisalfoundation.org);
- that the appraisal cannot be made earlier than 60 days before the preservation easement closing;
- and that the easement donor has the responsibility for obtaining above appraisal and for providing a copy to the land trust for review at least 5 days prior to the scheduled closing.

Who is a "qualified appraiser"?

The IRS defines a qualified appraiser an individual who has:

- Earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
- Regularly performs appraisals for which the individual receives compensation, and

- Is licensed or certified by the State of Ohio for the type of property being appraised.

What should landowners consider in selecting an appraiser?

Landowners should ask a number of questions when considering who should conduct this critical part of the preservation easement process, including:

- Is the appraiser aware of the new regulations and penalties for appraisers?
- Have they had to defend appraisals in front of the IRS?

How does an appraiser estimate value of an easement?

The appraiser determines the value of the easement, most frequently based on the value of the land before and after being encumbered by the preservation easement. The difference is the value of the preservation easement and the amount that may be taken as a tax deduction. This procedure is typically known as the "before and after approach."

As a simple example:

Value of the land before the preservation easement:	\$500,000
Value of the land after the preservation easement:	<u>\$350,000</u>
Difference = value of the preservation easement:	\$150,000
Proportionate value of the preservation easement example:	30%

Generally, a more restrictive easement will result in a higher proportionate easement value. But each parcel of land and each set of preservation restrictions are unique. Therefore, no set or average percentage of value can be attributed to the rights relinquished in an easement.

What does an appraiser consider in estimating the value?

An appraiser will look at a variety of factors concerning both the specific property subject to the easement and the surrounding area. Relevant factors will include:

- Location and character of the property,
- Existing zoning regulations and other laws or contracts that affect the property, and
- Development potential and future land use trends
- Specific restrictions placed on the building
- Specific rights reserved by the property owner
- Existence of contiguous or other property owned by the landowner or the landowner's family and the potential of the easement to enhance the value of the other property.

When should the appraisal be completed?

For charitable deduction purposes, the appraisal must be completed no earlier than 60 days before the date of the gift (the date on which the preservation easement is signed and accepted by the Cincinnati Preservation) and no later than the date on which the tax return for that year is due. In some circumstances, an older appraisal can be updated with more current data. For other non-tax purposes, timelines may vary. Preservation easement appraisals are complex and time consuming. As such, landowners should contact an appraiser early in the process as it may take up to 4 to 6 months or more to complete an appraisal.

Is it necessary to be concerned about the integrity of the appraisal?

YES. The IRS views this issue very seriously and may impose substantial penalties on both the landowner and the appraiser for gifts that are overvalued for tax purposes. Congress recently created new thresholds and penalties for donors and appraisers who artificially inflate the value of an easement for tax purposes. Landowners are well advised to choose an appraiser carefully and to work with the appraiser, a tax advisor and Cincinnati Preservation throughout the process of completing a preservation easement.

Required IRS forms

To document the value of their gift, preservation easement donors must attach IRS Form 8283 to their tax returns. Section B is the portion of Form 8283 that applies to easements valued at more than \$5,000.

In addition to Form 8283, the IRS requires a supplemental statement summarizing:

- The preservation values of the donated easement.
- The appraiser's valuation assumptions and conclusions, including fair market value of the property before the easement was in place and the fair market value of the property after the easement was conveyed to the Land Trust (if the before-and-after approach was used).
- Whether the easement was required by any contract, permit, or government approval.
- A description of any interest in any nearby land held by the donor or a related person.

The appraiser should be able to assist the donor in preparing this supplemental statement and may wish to include this required information as part of an overall appraisal summary. Cincinnati Preservation can also provide assistance in identifying the preservation purposes of the easement. Additionally, for easements valued at more than \$500,000, a copy of the entire appraisal must be included with the tax return.

Obtaining Cincinnati Preservation's signature

Cincinnati Preservation requests that donors submit IRS Form 8283 to Cincinnati Preservation after the donor and the appraiser have completed the appropriate sections and attached the supplemental statement. Cincinnati Preservation will then complete its portion of the form and return it for attachment to the donor's tax return.

Additional information

In addition to the detailed instructions for Form 8283, the Internal Revenue Service has a number of publications that provide information related to claiming a charitable contribution for the donation of a preservation easement. See IRS Publication 526, Charitable Contributions and IRS Publication 561, Determining the Value of Donated Property. These publications are available on the internet at www.irs.gov and from the Internal Revenue Service.

As with other aspects of donating an easement, Cincinnati Preservation highly recommends that all easement donors obtain professional advice from a knowledgeable attorney, accountant or other financial advisor before completing their tax returns.

Preservation easements are forever. With each easement, the Cincinnati Preservation Association accepts responsibility to protect that building(s) its preservation values in perpetuity. Stewardship in Cincinnati Preservation Association is that portion of our program designed to make sure that we meet our responsibility for each preservation easement over time.

Components of an Easement Stewardship Program

There are a number of specific components to the Cincinnati Preservation Association preservation easement stewardship program. These include:

- Creating the Baseline Documentation Report
- Easement administration
- Monitoring (once each year, at a minimum)
- Property owner relations
- Community relations
- Easement enforcement and defense

Each component of the program, discussed below, plays a critical role in making sure the Cincinnati Preservation fulfills its obligations to our landowners and the lands they have placed in our care.

Working in Partnership

Cincinnati Preservation Association recognizes that it cannot be successful without working in cooperation with the many property owners dedicated to protecting their lands through preservation easements. Cincinnati Preservation considers each of these property owners a partner in preservation and is dedicated to working with them in a respectful and professional manner.

Voluntary Compliance vs. Legal Enforcement

The primary objective of our stewardship program is to preserve the preservation values of those buildings protected by preservation easements. Ensuring compliance with the terms of each easement is critical to meeting this objective. Cincinnati Preservation is prepared to legally defend and enforce its easements when necessary. Legal enforcement, however, is a remedy of last resort - our stewardship goal is voluntary compliance.

To this goal we work in partnership with property owners—and the local communities in which our protected buildings are located.

Recordkeeping

Our commitment to building preservation cannot be met unless we also manage our program to keep track of the status and condition of the buildings protected by our preservation easements. Therefore, we also:

- Document the condition of buildings protected by each easement at the time the easement is completed by completing a baseline documentation report
- Monitor the condition of the property annually
- Maintain accurate records regarding each preservation easement accepted by Cincinnati Preservation

Preservation Easement Stewardship Funding

The donation of a preservation easement is an act of generosity by the landowner. In accepting this easement, CINCINNATI PRESERVATION assumes the legal obligation to carry out the donor's desires for the property by upholding the terms of the easement – forever. In assuming the stewardship responsibility, Cincinnati Preservation has assumed a perpetual liability.

Cincinnati Preservation manages a dedicated Preservation Easement Fund to provide a long-term source of income to cover future costs associated with monitoring and managing our portfolio of preservation easements. The fund is also available to cover extraordinary expenses associated with managing, upholding or defending an easement should its terms or validity be violated or threatened. Contributions to the stewardship fund are pooled from a number of sources, including landowners, and are managed judiciously.

The Preservation Easement Fund is restricted solely to covering the costs of monitoring and defending our preservation easements. It enables us to make annual monitoring visits to each property and most importantly, it will ensure our ability to take whatever actions are necessary to uphold the terms of every easement.

Each preservation easement donor is required to provide a donation to the Preservation Easement Fund prior to or at closing. A Donation fee on the following schedule of the properties Fair Market Value based on an appraisal or the county auditor if not taking an IRS tax deduction.

- a. up to \$250,000- \$5,000
- b. \$250,000-500,000- \$10,000
- c. \$500,000+-\$15,000