



## Guide to Donating a Preservation Easement

Cincinnati Preservation welcomes the opportunity to work with you to protect your historic building with a Preservation Easement. Donating a preservation easement is a powerful way to ensure the long-term protection of your historic property while potentially receiving meaningful financial and personal benefits.

This guide provides an overview of donating a preservation easement to Cincinnati Preservation, including:

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

### Steps to Donating a Preservation Easement

| Steps                                   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 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 property.                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Submit Application                      | If after the initial consultation you want to proceed with an easement, submit a Preservation Easement Application with the required application fee. This application is available on our website or from staff.                                                                                                                                                                                                                                                                                                                                                                               |
| Application Review and Initial Research | Staff reviews the application for eligibility. If the property is not listed on the National Register of Historic Places, Cincinnati Preservation will submit the property to the State Historic Preservation Office for determination of eligibility. If the property owner wants to receive a tax deduction for their donation, the property must be listed in the National Register prior to donating the easement in order for a tax deduction being claimed by the easement donor. Cincinnati Preservation is available to prepare the National Register nomination for an additional fee. |
| Discuss Easement Terms                  | Meet with Cincinnati Preservation to discuss the restrictions that are appropriate to protect the significant architectural and historic features of the property.                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Committee Approval                      | Project is evaluated by Cincinnati Preservation's Finance Committee to determine if it meets preservation purposes and whether staff should continue work on the project.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Easement Draft                          | Cincinnati Preservation prepares the draft preservation easement for review by the property owner and the property owner's attorney.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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| Boundary Survey                                                           | <p>Provide a copy of a boundary survey to Cincinnati Preservation as part of the drafting of the preservation easement.</p> <p>If your property has not been surveyed recently or if you are considering a change to the property boundary prior to donating the easement, a qualified land surveyor should survey the property prior to the final appraisal. This will ensure there is a clear understanding of the property being protected by the preservation easement, including any boundary features (e.g. retaining walls).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>Appraisal</p> <p><i>For tax-deductible easement donations only</i></p> | <p>The charitable donation of a preservation easement may qualify for a federal tax deduction as a charitable contribution. An easement donor must obtain a written appraisal from a qualified appraiser to determine the value of the preservation easement to claim a tax deduction for the donation of the preservation easement.</p> <p>Cincinnati Preservation will review each potentially tax deductible preservation easement for consistency with Section 170 of the Internal Revenue Code and the accompanying Treasury Department Regulations (U.S.C. §1.170A-14).</p> <p>The easement donor has the responsibility for obtaining a qualified appraisal and for providing a draft copy to Cincinnati Preservation for review at least 7 days prior to the scheduled closing.</p> <p>Cincinnati Preservation will not knowingly participate in preservation easement projects where it has significant concerns about the appraisal or the tax deduction. If Cincinnati Preservation has substantial concerns about the appraised value or the appraisal, Cincinnati Preservation will convey these concerns to the property owner in writing. Property owners interested in a tax-deductible preservation easement donation should consult with financial and legal advisors and/or an accountant.</p> <p>If no tax deduction is desired, no appraisal is needed and the donation fee required will be based on the current County Auditors' valuation.</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. All other liens, such as a life estate or leases must be subordinated to the easement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Baseline Documentation Report                                             | No more than 180 days prior to the donation, Cincinnati Preservation staff will prepare the baseline documentation report that documents the preservation values and current conditions of the property through text, photographs and maps. Staff will provide a draft to the property owner for review and comment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| 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                                                    | Cincinnati Preservation and the property owner signs the preservation easement and the preservation easement baseline documentation, which records the condition of the property at the time of donation. |
| Final copy of the appraisal<br><i>For tax-deductible easement donations only</i> | Prior to Cincinnati Preservation signing the IRS Form 8283, it must receive a final copy of the appraisal.                                                                                                |
| IRS form 8283<br><i>For tax-deductible easement donations only</i>               | Obtain IRS Form 8283 from your accountant to apply for a tax deduction. The completed form should be signed by the appraiser and Cincinnati Preservation in order to claim a federal tax deduction.       |

## Claiming a Federal Tax Deduction

The donation of a preservation easement often qualifies as a charitable contribution, allowing the donor to take a federal income tax deduction. The following summarizes some specific Internal Revenue Service requirements governing these contributions. All of this is provided for informational purposes and Cincinnati Preservation highly suggests you talk to your legal, accounting, and financial advisors. Cincinnati Preservation is unable to provide easement donors with individualized legal or tax advice.

### **Preserving Your Property and Receiving Financial Benefits**

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. When owners donate a preservation easement, they often give up part of the value of their property. Federal tax incentives offset some of the loss in property value.

The [Pension Protection Act of 2006](#) enacted several provisions to encourage conservation contributions, including allowing certain qualifying charitable contributions to be carried over to succeeding taxable years.

### **Arranging for an Appraisal**

To claim a federal tax deduction, a property owner 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 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.

#### Is an appraisal required?

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

#### What is a “qualified appraisal”?

Section 170 of the Internal Revenue Code outlines appraisal requirements that the donor must satisfy to qualify for a federal income tax deduction. Generally, a qualified appraisal must:

- meet the relevant requirements of Treasury Regulations § 1.170A-17(a),
- be prepared, signed, and dated by a qualified appraiser in accordance with generally accepted appraisal standards, and
- be dated no earlier than 60 days before the recordation of the easement nor later than the due date (including extensions) of the tax return on which the charitable contribution deduction is first claimed.
  - Consult IRS guidance for additional information on partnership or S corporation donations, or amended returns.

#### Who is a “qualified appraiser”?

The IRS defines a qualified appraiser as 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 of the Treasury,

- Regularly performs appraisals for which the individual receives compensation, and
- Is licensed or certified by the State, for which the property is located in for the type of property being appraised.

#### 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 restrictions outlined in 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.”

A simple “before and after” example:

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

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.

#### When should the appraisal be completed?

For charitable contributions of easements, the appraisal must be completed no earlier than 60 days before the date of the gift (the date on which the preservation easement is recorded in the land records) and no later than the date on which the tax return for that year is due. Preservation easement appraisals are complex and time consuming. As such, property owners 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 easement donor and the appraiser for charitable contributions 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. Property owners are well advised to choose an appraiser carefully and to work with the appraiser, a tax and legal advisor, and Cincinnati Preservation throughout the process of completing a preservation easement.

#### **Required IRS forms**

Preservation easement donors must attach IRS Form 8283 to their tax returns to document the value of their charitable contribution.

#### **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.

#### **Additional information**

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. These publications are available on the internet at [www.irs.gov](http://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 Easement Stewardship

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

### Components of an Easement Stewardship Program

There are several specific components to the Cincinnati Preservation preservation easement stewardship program. These include:

- Creating the Baseline Documentation Report
- Easement administration, including reviewing changes or alterations
- Monitoring (once each year, at a minimum)
- Property owner preservation technical assistance
- 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 property owners and the lands they have placed in our care.

### Working in Partnership

Cincinnati Preservation 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 achieve this goal, we work in partnership with property owners and the local communities in which our protected buildings are located.

### Recordkeeping

Our commitment to each of our easement properties 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 records regarding each preservation easement accepted by Cincinnati Preservation

### Preservation Easement Stewardship Funding

The donation of a preservation easement is a voluntary act by the property owner. 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. Cincinnati Preservation assumes the perpetual liability in assuming this stewardship responsibility.

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 be violated or threatened.

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. This donation may be tax-deductible, consult an accountant. The donation amount is based upon the property's Fair Market Value based on an appraisal, or if not taking an IRS tax deduction, the most recent county auditor's valuation:

| PROPERTY VALUE    | DONATION AMOUNT |
|-------------------|-----------------|
| Up to \$250,000   | \$5,000         |
| \$250,000-500,000 | \$10,000        |
| \$500,000+        | \$15,000        |