

I. LAND DONATION OPTIONS

Donating land to a nonprofit conservation organization such as a land trust or to a public conservation/agency, is the most straightforward method of permanent land protection, and it results in the greatest direct tax benefit for the donor. There are many ways to donate land.

Conveying land by gift to a land trust or other conservation agency transfers ownership and management responsibilities from you the recipient, ends the burden of your property taxes, provides you with maximum income tax and estate tax benefits, and avoids the capital gains tax which would be incurred if you sold the land.

A land donation can be structured to allow you to continue to live on the land by donating a remainder interest and retaining a reserved life estate. You may also choose to donate land by will, continuing to own and control your land during your lifetime, but assuring its protection after your death. Most important, the donated land will be protected in perpetuity.

A. Outright Gift of Land

An outright gift of land may be the best conservation strategy for you if:

- You own highly appreciated property
- You have substantial real estate holdings and wish to reduce estate tax burdens
- You do not wish to pass the land on to heirs
- You own property you no longer use
- You own property you cannot now build on – it has become a financial albatross
- You would like to be relieved of the responsibility of managing and caring for the land
- You wish to make a lasting gift to the environment, to your community and to future generations

Advantages of Outright Gifts of Land

- Simplicity and permanence
- If you or family members own or retain adjacent or nearby property, you may benefit from its proximity to conservation land.
- Generally, the fair market value of the donated property is tax-deductible as a charitable contribution.
- You avoid capital gains taxes upon the land.
- You eliminate property taxes on the donated land (after any past and current taxes are paid)
- You reduce the size of your estate, and thereby reduce the amount of state and federal estate taxes.

B. Donating Land By Will

The donation of land to a land trust or conservation organization by will (only known as bequests, testamentary gifts, or devises) has become an increasingly popular technique for conserving land in Massachusetts. Recipient organization should be consulted before including the gift in your will.

Advantages of Donating Land by Will:

- Ensures conservation of your treasured property, and allows you to enjoy the benefits of full ownership during your lifetime
- Reversibility: you can re-write your will at any time to remove the donation if your financial situation or intentions change.
- Relative simplicity of bequest preparation which avoids detailed negotiations required to determine best income tax deduction on gifts made during your lifetime
- Removes property from your estate, which can significantly reduce estate taxes for your heirs

C. Donating A Remainder Interest with A Reserved Life Estate

You can donate property during your lifetime, and reserve the right for yourself, and other persons you specifically designate, to continue using the property during your lifetimes. When you and those you have specified either die or release their interests, the land trust/agency assumes full title and control over the property.

How it works:

The value of the gift for tax purposes is the value the remainder interest, i.e., the length of time reserved for personal use. This is determined by subtracting the value of the reserved life estate (determined from actuarial tables) from the appraised fair Market value of the property. The longer the period of reserved use (i.e., the younger the donor or specified holders of the reserved life estate), the lower the value of the remainder interest, and so the value of the gift for tax purposes will be commensurately lower. The values are determined from IRS actuarial tables based on average life expectancies.

Advantages of a Remainder Interest with a Reserved Life Estate

- The income tax advantages of this strategy are less than from an outright donation, but they are greater than from a gift by bequest.
 - As a holder of a reserved life estate, you would continue to be responsible for property taxes until the recipient obtains full title to the property
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D. Donating Non-Conservation Real Estate to Generate Conservation Funds

You can generate badly needed funds for conservation purposes by donating real estate of any kind to support the work of your local land trust or other conservation agency. Property that does not have special natural features or that is not suited for permanent management by a conservation organization may be a candidate for such a donation. Two easy ways you can generate badly needed funds for open space purchase and protection and reap major tax benefits for yourself are donations of Trade Land and donation of land through a Charitable Remainder Trust.

i. Trade Land Donation

A donated commercial property, or a single family home, a condominium or other type of real estate can provide tremendous rewards for the non-profit organization, and can create substantial tax benefits for you. The recipient organization can resell the property, subject to appropriate restrictions to protect any conservation values, and use the proceeds to benefit its conservation programs, including the purchase of critical lands elsewhere. This method maintains your real estate in its present form and use, keeps it in private ownership, and on the tax rolls, and allows the land trust to use proceeds from the sale for its conservation work.

ii. Donating Land to Benefit Conservation While Establishing a Life Income

By establishing a Charitable Remainder Trust, you can protect land, provide significant, immediate, and long-term tax benefits, and assist in your family estate planning. In the case of real estate, this is an excellent way to increase income from a low-yielding asset.

How it Works:

- You, the donor, with the advice of an attorney experienced in planned giving techniques, establish a Charitable Remainder Trust.
- You, the donor, donate a Conservation Restriction on your property to a land trust or other conservation agency. You then give the restricted property to the Charitable Remainder Trust, which allows you to claim a charitable tax deduction
- The Trust sells the property (you avoid capital gains taxes), and invests the proceeds to provide income to you or your designated beneficiaries for a fixed term or beneficiary's lifetimes
- After that point, the trustee turns over any remaining funds in the trust to the designated land trust or conservation organization

Advantages of a Charitable Remainder Trust

- Provides life income
- Allows you to diversify your assets
- You avoid capital gains taxes on sale of the property

II. PART SALE / PART GIFT (BARGAIN SALE OF LAND)

If you need to realize some immediate income from your land, yet you would like property to be protected; a bargain sale might be the answer. In a bargain sale, you sell the land for less than its Fair Market Value. This not only makes it more affordable for the land trust, but also offers several benefits to you. The difference between the appraised market value and the sale price to a qualified nonprofit or governmental agency is considered a tax-deductible charitable contribution.

Advantages of a Bargain Sale

- Provides cash
- Avoids some capital gains tax
- Entitles you to an income tax deduction based on the difference between the fair market value of the land and its sale price.

III. CONSERVATION RESTRICTIONS

Conservation Restriction (also called Conservation Easements and CRs) have helped thousands of American families protect millions of acres of open space. A conservation restriction is a legal agreement between a landowner and a land trust or other agency that permanently limits use of the land in order to protect its conservation values.

How Conservation Restriction Work

- You continue to own and use your land. You may sell it or pass it on to heirs
- When you donate a conservation restriction (CR) to a land trust or a conservation agency, you agree on behalf of yourself and successor owners not to develop or use the property in specified ways harmful to the features or qualities to be protected. This agreement is recorded with the state like a deed.
- You may specify the conservation values to be protected, determine the limits, as well as the allowed uses of your land.
- A CR may apply to only a specific portion of your property, leaving the option of development or building future homes for your children and grandchildren open for the remaining part. It may even allow limited building within the area under restriction. A CR agreement is recorded like a deed, and all present and future owners of the property will have to comply with its terms.
- A CR can be fashioned to meet the financial and personal needs of the landowner.
- A CR can also be donated via a will with the same effect on estate taxes as a life-time donation. The restriction should be negotiated with proposed recipient before being written into your will.
- Massachusetts law provides for a broad variety of conservation restrictions which can be used to protect lands. As defined by the State and the IRS, a valid conservation purpose is one of more of the following:

- Areas for public recreation or education
- A natural habitat for fish, wildlife, plants, etc.
- Scenic enjoyment or any like public benefit
- Farmland and forestland or like open space
- Historically important land area or structure
- Donated CR's must be documented to demonstrate any of the above criteria and substantiated by appraisal. If your lawyer is unfamiliar with this strategy, your Lands Trust will be pleased to direct you appropriately.

CRs are donated and enforced for the benefit of the public, but they do not give the public any right to use the property unless the agreement specifically allows for public access.

Advantages of a Conversation Restriction

If you donate a conservation restriction that meets federal tax code requirements, the value of the restriction can be treated as a charitable gift and deducted from income tax (to the extent your particular tax situation allows), and may also result in property tax savings.

Whether the restriction is donated during your life or by will, it can make a critical difference in your heirs' ability to keep the land intact. By removing the land's development potential, the restriction lowers its market value, which in turn lowers estate tax.

The Sippican Lands Trust has a step-by-step, how-to document on setting up a Conservation Restriction, available upon request.

IV. COMBINATION TECHNIQUES

A. Combining the Gift of a Remainder Interest with a Conservation Restriction

If you would like to assure permanent protection of land that is the subject of a remainder interest gift *and* maximize your income tax deduction, you can donation a conservation restriction on the land, before you donate a remainder interest. In this way, you may qualify fir two separate income tax deductions – one for the restriction and the other for the remainder interest.

B. Limited Development

Landowners may wish to protect property that has conservation value, but are not able to sacrifice what may be their most valuable asset. Limited development can serve as a workable alternative for landowners seeking to preserve their land, yet are in need of some direct financial gain from their property. On appropriate parcels of land, and with a cooperating developer, a number of dwellings can be built, while the remaining land is permanently protected. The new development will be strategically located to preserve the property's most critical scenic and natural resources, and the owner will receive a cash return from the property. This land conversation method is sometimes referred to as Cluster, Conservation or Open Space development.

V. CHAPTER 61: OPEN SPACE TAX REDUCTION PROGRAM

Massachusetts has adopted three related measures known as Chapter 61, 61A and 61B, which substantially reduce property taxes on eligible forest land, agricultural or horticultural land, and open space and recreational land. These are similar in intent to open space or current use tax arrangements in other states, but there are important differences. All three measures are voluntary, have specific criteria for eligibility, and provide for penalties if the land becomes ineligible or is withdrawn from the program.

If you would like further information about any of these techniques, please call, write or email the Sippican Lands Trust, 589 Mill Street, Marion, MA 02738 (508) 748-3080 info@sippicanlandstrust.org. We are happy to answer questions, provide additional information, or put you in touch with someone who has used one of these techniques or who can help you explore some of the options.