

# CONSERVATION EASEMENT 101

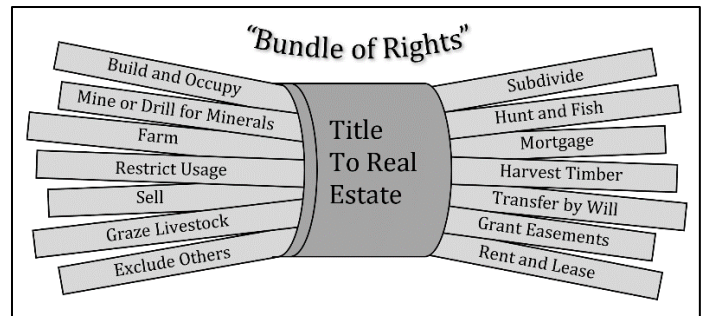
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## What is a Conservation Easement?

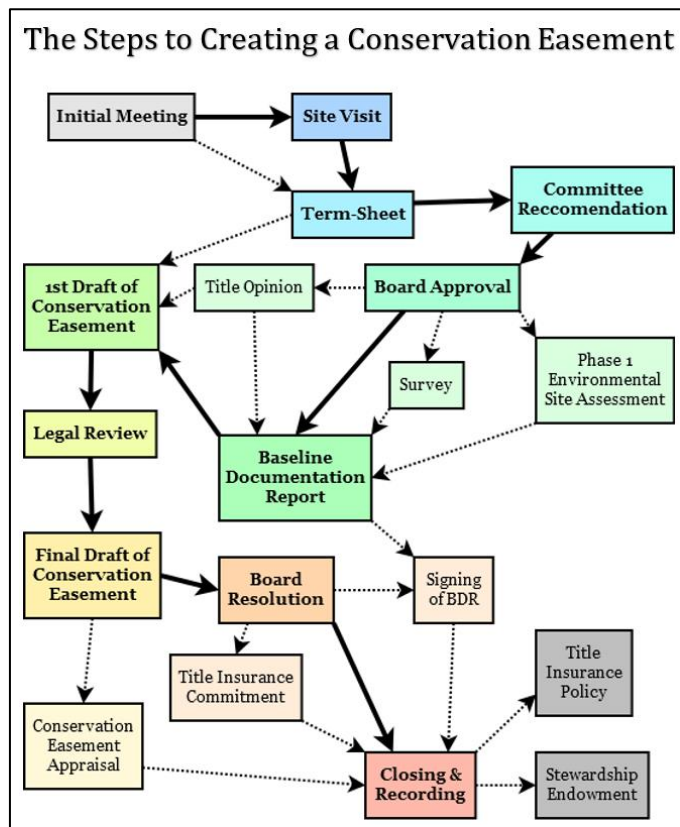
A **Conservation Easement** is a voluntary legal agreement between a landowner and a **Land Trust**. It is a publicly recorded document that sticks with the land from one owner to the next, forever. The landowner still owns the property and uses it within the limits of their conservation easement. Simultaneously, the land trust is entrusted by the landowner with upholding the restrictions of their conservation easement. The land trust will forever be there to make sure the terms of the conservation easement are honored by any and all future landowners.

A helpful way to conceptualize property rights is the “bundle of sticks” analogy. Think of your land ownership as owning a bundle of sticks, where each “stick” is a different property right. The “bundle” is your title to the land, the thing that ties all those rights together. Together these bundled rights represent everything you can legally do with the property. What a conservation easement allows is for certain rights to be pulled out from that bundle and given to a land trust, who is then legally bound to keep those rights together and from ever being misused.



## Why would someone want to donate a Conservation Easement?

A conservation easement is a valuable tool for landowners who seek to leave a conservation legacy on their property. Since a conservation easement is perpetual, permanent, and sticks with the land, it's one of the only ways a landowner can retain influence over their land after they sell it or pass it on to their heirs. A conservation easement allows you, the landowner, to decide everything that can and can't be done with your property, forever. Every conservation easement is different and they are custom drafted both to meet the precise needs of the landowner and to protect the unique conservation values of the property. Conservation easements can be especially helpful in keeping family land intact through generational changes. Additionally, there are potential federal, state, and local tax savings and even public grant programs that incentivize the charitable donation of conservation easements for genuine conservation purposes.



## What needs to be done to create a Conservation Easement?

A conservation easement is a complex legal agreement which needs to withstand the test of time. As such, there is substantial ground work necessary to lay a solid foundation for the conservation easement to be built upon and for it to stand firm into the future, forever. This is called **Due Diligence**. Once the process starts, it can take a year or more until a conservation easement is recorded. During the process the property will need to be surveyed, appraised, assessed for environmental contamination, and its title researched by professionals. The land trust itself will also need to document and map site conditions and review documents internally. This work is all done to assure the conservation easement is accurate and watertight from a legal perspective. With this foundational work done, the land trust will create the first draft of your conservation easement. The easement will go through many drafts along the way before a final version is accepted by everyone. Once the conservation easement is recorded with the County, it becomes enforceable.

## What does it cost to create a Conservation Easement?

A conservation easement is a complicated document in need of a lot of specialized work. So, it's not a cheap undertaking. On average, a conservation easement costs the land trust \$6,000 and the landowner \$14,000. The total costs can vary wildly based on who is hired, the size of the property, timing, and the complexity of any issues that may arise. Once the conservation easement is donated, the landowner will be asked to donate to the stewardship endowment for their conservation easement. The total amount of the stewardship endowment is 2% of the conservation easement value or \$6,500, whichever is greater.

## Are there any financial incentives for donating a Conservation Easement?

There are potentially significant tax savings for donating a conservation easement. The donation of a conservation easement, if the due diligence is performed correctly according to federal tax law and IRS guidelines, can be claimed as a charitable contribution to reduce the donor's federal income tax. The **Conservation Easement Value**, as determined by the appraisal and less any compensation to the landowner, may be considered a qualified conservation contribution. This can be utilized to reduce the donor's adjusted gross income by up to 50% annually for up to 16 years or until the entire contribution amount is deducted, whichever comes first. There are also state tax credits. For every acre of high-ground covered by the conservation easement, the donor can receive \$250 in SC tax credits. These credits do not expire, can be transferred or sold between individuals, and can be used to offset the donor's tax liability at a one-to-one rate against their SC state taxes owed. Furthermore, there is also the potential to reduce your annual property taxes on the eased property. After donating a conservation easement, the landowner can apply to their local assessor's office, provide a copy of the recorded conservation easement and its appraisal, and request their assessment be lowered to reflect the reduced value from the conservation easement.

Land trusts and their staff are not permitted to give personalized tax or legal advice and none of the above should be misconstrued as such. This information is presented as generalized examples for educational purposes. Please seek qualified and competent independent legal and tax advice for any personal issues or questions you may have.

## Are there any grants to pay for the costs of a Conservation Easement?

The land trust can apply for public grant funding to assist the landowner financially with the conservation easement. The South Carolina Conservation Bank (SCCB) offers conservation grant funding for conservation easement projects throughout South Carolina. The Charleston County Greenbelt Program (CCGB) offers funding for conservation easement projects located in Charleston County. EIOLT is a qualified applicant who can apply for funding from both grant programs. Grant awards from these funding sources can cover both parties' costs for developing a conservation easement and can even pay the landowner for a portion of the land value they are "giving up" through the donation of the conservation easement. This is called a **Conservation Easement Bargain Sale**.

EIOLT on average applies for 30% of the conservation easement value, in addition to funds to cover both parties' closing costs. These applications are not guaranteed to succeed and can take over 100 hours of staff time to complete. So, EIOLT requires a \$2,500 application fee from the landowner before we will begin a grant application. If the application is successful, both parties will be reimbursed for the majority of their closing costs and the landowner will be paid a pre-determined amount in order to compensate them for their conservation easement.

Many landowners find grant compensation compelling, as the lump-sum payment and reimbursement of expenses at closing provides a more tangible financial result in the short-term and, for those who are retired or on a fixed income, is often considered a better financial outcome, given their lower tax burden. Although it makes the entire process more complicated and take longer, the potential financial benefits are often hard to ignore.

