

ESTATE PLANNING NEWSLETTER

Using Conservation Easements

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Conservation easements can be a great way to protect your land and provide some significant tax benefits, including a substantial income tax deduction when the conservation easement is created. Most of us have any number of easements that may affect our property, but the most common easements are for utilities or access to a right-of-way on our property. An easement is simply a right granted, generally by the landowner to another party related to the usage or property rights for the property on which the easement is obtained.

A conservation easement gives either a government agency or a land protection organization rights related to the conservation of the property. Generally, the landowner and the organization agree upon certain restrictions related to development of the property, activities on the property and/or commercial and industrial uses. The overall purpose of a conserva-

tion easement is to protect the property from certain types of development, but a landowner also receives significant tax and other financial advantages from granting a conservation easement.

Obviously, not all property is appropriate for a conservation easement since the overall purpose is to preserve and protect the land. Pursuant to the IRS regulations, the property must have "significant" conservation value. However, agricultural land, land rich in natural resources, wildlife or timber, beaches, and wetlands often have significant conservation value and therefore may be appropriate for a conservation easement. A landowner can grant a conservation easement over only a portion of the land so the easement could affect.

Once the conservation easement is granted, it lasts forever and is binding on all future owners of the land. In fact, in order to qualify for the federal income tax deduction, the easement

must be perpetual. The landowner retains full management and control rights of the property, as long as it is consistent with the easement. The entity to whom the easement is granted, generally called the conservancy, has the right and duty to enforce the easement, which means that the conservancy must monitor the property and ensure that the conservation easement is being upheld. The conservancy has the right to pursue legal action if the easement is not being upheld.

Granting a conservation easement does not mean the landowner gives up all of his or her rights, nor does it mean that the property becomes public or subject to public access. The landowner and the organization can agree on those terms, but they do not have to. In fact, the landowner can reserve specific rights for himself or herself and not grant any use of the land.

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Although the landowner is giving up certain development rights, a conservation easement by no means entails giving up all ownership rights in the property.

So why would you want to do this? The obvious advantage is the landowner's interest in preserving the land from development and preserving its natural state. However, since the landowner is giving up certain economic rights in the way of development, the landowner can receive significant tax benefits.

First, a landowner receives a federal income tax deduction. In order to qualify, the easement must be perpetual, held by a qualified government or non-profit organization and serve a

valid conservation purpose. The size of the deduction is based on the value of the conservation easement. In order to determine the value, an appraisal is required to determine the difference between the fair market value of the property before the easement is granted and the fair market value after the easement takes effect. Because limiting the development rights can significantly reduce the economic value of the property, the deduction may be quite large.

Additionally, conservation easements can significantly reduce the overall value of the estate for estate tax purposes. The estate will not include the value of the conservation easement that was granted

and might significantly reduce the value of the property for estate tax purposes.

In addition, the tax code provides that the value of the property would not only exclude the value of the easement itself but also an additional discount from the value that is subject to estate tax.

As we discussed above, a conservation easement is not for everyone, but it can provide significant advantages, both for the property and the landowner, in the right situation. If you would like to learn more about these easements and the potential benefits for your situation, please contact our office .



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FIRM NEWS

Congratulations to Lang Wiseman for being elected Chairman of the Shelby County Republican Party at its biennial convention.

He is excited about the opportunity to serve as party chairman. Although it will be challenging for Lang, his new responsibility presents enormous opportunity.

You can now follow us on Twitter, or you can go to the Wiseman Bray PLLC Facebook page and become a fan of our firm. In addition, all of our attorneys have joined LinkedIn, and we will soon have the Wiseman Bray PLLC blog.

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