



# Questions & Answers

**Trust for Architectural Easements**





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The Federal Historic Preservation Tax Incentive Program, a program created by Congress, allows the owner of a property certified as historic by the National Park Service to donate a preservation easement on the property to a qualified charitable or governmental organization. In connection with this donation, the owner may be eligible to claim a non-cash charitable contribution deduction in an amount equal to the fair market value of the easement, as determined by an independent, qualified appraiser.

Questions frequently asked about this donation process include:

## **What is the Trust for Architectural Easements?**

The Trust for Architectural Easements is a 501(c)(3) charitable organization dedicated to historic preservation. The Trust achieves its mission primarily by accepting historic preservation easement donations, providing grants for educational programs and physical improvements in the cities it serves, assisting property owners and local organizations with obtaining National Register listing for their historically-significant districts and properties, and educating the public about America's architectural history and the importance of preserving it.

## **What is the Federal Historic Preservation Tax Incentive Program?**

The Federal Historic Preservation Tax Incentive Program is a program promulgated by Internal Revenue Code section 170(h), which allows the owner of an eligible historic property to donate a historic preservation easement on the property to a qualified charitable or governmental organization. In connection with this donation, the donor may be eligible to claim a non-cash charitable contribution deduction in an amount equal to the fair market value of the easement, as determined by an independent, qualified appraiser. Please visit the Trust website or the IRS website for more information.

## **What factors caused Congress to pass this legislation?**

The Federal Historic Preservation Tax Incentive Program was instituted to level the playing field between historic preservation and new development, and to encourage private preservation efforts where government action was inadequate.

The National Historic Preservation Act of 1966 recognizes preservation as a federal priority by instituting reforms in federal policy that counteract the destruction brought about by urban renewal and federal highway building. The Act also created the National Register of Historic Places, the official list of the nation's historic places worthy of preservation. Properties listed in the National Register must be considered when federal undertakings will affect them, and they are eligible for federal tax incentives for preservation.

Federal tax incentives were enacted by Congress in 1976 and amended in 1980, 2006, and 2008 to encourage voluntary preservation as an enhancement of local preservation efforts. This legislation serves as the basis for the Program. Congress' concern that government regulation fails to adequately protect historic properties is as valid today as it was when the legislation was first enacted. According to a survey by the National Alliance of Preservation Commissions, approximately 50% of historic districts listed in the National Register have no local oversight. Further, 40% of the local commissions that regulate historic districts lack the authority to enforce decisions. Many preservation commissions also lack sufficient funding or staff to monitor those properties they are charged with overseeing.

### **What is a historic preservation easement?**

A historic preservation easement is a voluntary, legal agreement made between a property owner and a qualified organization, either not-for-profit or governmental, to protect a significant historic building in perpetuity. Easements often protect only the exterior of the property, which includes all exterior walls and roofs, including the building's height. If a donor wishes, s/he may combine interior and exterior protections.

### **How long does a historic preservation easement last?**

The main purpose of a historic preservation easement is to forever guarantee protection of the property's historic character. As a result, the tax code requires that the easement be granted in perpetuity for the donation to be tax-deductible. To ensure perpetuity, the easement will be recorded in local land records to provide notice of the preservation restrictions to all future purchasers.

### **What restrictions are imposed on the property owner?**

By granting an easement, the owner agrees – both for him/herself and future owners of the building – not to change the protected features of the property without the permission of the easement-holding organization. Specifically, the restrictions require that the property owner receive the consent of the Trust before any exterior modifications are made that will change the appearance – and in some cases materials – of the building's front, rear and side façades, or that will change the building's height. Owners are also required to provide annual access for easement monitoring by the Trust's staff.

### **What criteria does the Trust use when reviewing a proposed change?**

In general, a proposed change is acceptable if it is consistent with the specific property's historical character. That determination is made by reviewing the request for compliance with the Secretary of the Interior's Standards for Rehabilitation, a set of federal preservation guidelines, and the specific history of the property's architectural evolution. Change request approvals are granted on a case-by-case basis. Visit the Trust website for more information.

## **How long does it take to receive a decision from the Trust regarding a proposed change to a property?**

The Trust will normally respond within 30 days to all requests provided that a complete Proposed Modification Request Form and all supporting materials are received at the same time. In the circumstance where the changes are of a large scale and more time is needed for review, the Trust will promptly inform the owner as to when s/he can expect a final decision. Delays may also result if additional information requested by the Trust is not provided in a timely manner.

## **What are the tax benefits of donating an easement?**

The donation of a historic preservation easement is recognized as a non-cash charitable contribution under the tax code. The value of the donation is based on the fair market value of the easement, as determined by an independent, qualified appraiser and may be deducted from the owner's federal income taxes in the same manner as other charitable contributions. In many cases, this deduction applies to state and local income taxes as well. The Trust recommends that donors consult with their own tax advisors regarding the specific requirements of claiming a tax deduction in connection with a historic preservation easement donation. The Trust does not provide tax advice to easement donors.

## **What is the value of a historic preservation easement and how is it determined?**

The value of the easement is determined by an independent, qualified appraiser. Absent an active market of similar easements to provide comparable sales, the easement value is generally based on the difference between the fair market value of the property before the easement donation and the fair market value of the property after the easement donation. This is commonly known as the "before and after method." U.S. Tax Court and District Court cases have generally stated that the easement value must be based on the facts of a particular appraisal situation, and not on a predetermined formula. Copies of current and past court cases regarding easement donations are available in Court Cases on the Trust's website.

In recent years, easement valuation has come under increased scrutiny by the IRS. IRS Notices and other communications pertaining to easement valuation are available at the IRS website and in Tax Laws and IRS Matters on the Trust's website. In particular, IRS Publication 561 – Determining the Value of Donated Property – provides crucial information. It is important for property owners to review this information with their own legal and/or tax advisors prior to making an easement donation.

## **How does the public benefit from the donation of a historic preservation easement?**

The Federal Historic Preservation Tax Incentive Program, which allows for tax-deductible easement donations, is excellent public policy because:

- The Program is an effective method of encouraging owners of historically-significant properties to make historic preservation easement donations. The terms of the easement donation require that the donor and future owners of the property properly maintain the property and prohibit alterations inconsistent with the historic character of the protected facades. The easement also prohibits demolition of the structure. Such requirements ensure that properties subject to a historic preservation easement are preserved for public enjoyment forever.

- Historic preservation easements further our country's efforts to preserve historically-significant properties and neighborhoods by creating a system of oversight, regulation and enforcement that is separate from local government preservation efforts, which are often subject to financial limitations and political influences. When an independent charitable organization receives a donation of a historic preservation easement, it is bound by the terms of the easement and its mission to protect the historic character of the subject property in perpetuity for the benefit of the community.
- By preserving historically-significant properties and neighborhoods through historic preservation easements, such properties and neighborhoods can be used as a living artifact to educate the public about America's history, culture and heritage.
- The visible maintenance and preservation of only a few historic residences in a single neighborhood, resulting from donations of historic preservation easements, can have a positive influence and foster voluntary preservation of the remainder of the homes in the historic neighborhood.

### **What are the Trust for Architectural Easements' accomplishments with respect to the acceptance and protection of easement donations?**

The Trust holds more than 825 easements and has a Stewardship Fund of more than \$12 million to ensure the protection of these historic resources in perpetuity. The Trust conducts a physical review of each protected property at least annually to assess condition and check for alterations, whether authorized or not. The Trust currently serves historic communities in California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York and Virginia. The Trust plans to expand its preservation efforts to additional communities.

### **What are the Trust for Architectural Easements' accomplishments other than the protection of historic properties with easements?**

The Trust allocates resources for education on architectural history and historic preservation. The Trust has supported openhousenewyork's Open House Weekend and the publication of Park Slope Neighborhood & Architectural History Guide by the Brooklyn Historical Society. In past years, the Trust funded teachers' programs on tall buildings and Louis Kahn, both by the Museum of Modern Art, and supported a permanent exhibit at the National Building Museum. The Trust provided funding for a lecture series on the history of New York hosted by the Downtown Alliance and also hosted a traveling panel series on sustainability and historic preservation in partnership with Island Press. In addition, the Trust has committed staff resources to school workshops on architecture and urban planning and walking tours for children.

The Trust supports local initiatives to restore the character of historic neighborhoods. The Trust has provided grants to community groups in New York's Greenwich Village and NoHo to restore portions of the neighborhoods' historic granite cobblestone streets. The Trust has also provided financial support to community groups working to preserve and restore historic neighborhood parks. Canal Park and James Bogardus Triangle, both in New York, and Hiscock Park in Boston are public spaces the Trust has helped restore. Funding of the Citywide Monuments Conservation Program, run by the New York City Department of Parks and Recreation, allowed summer interns to restore public works of art in New York's parks.

In addition to promoting preservation in existing historic districts, the Trust is also an effective ally for groups and individuals working to obtain federal designation for their historic properties and neighborhoods, including listing on the National Register of Historic Places and certification as a registered historic district.

The Trust has assisted with these efforts in the following communities:

### **Maryland**

Reservoir Hill Historic District (Listed in 2004)

### **Massachusetts**

Beacon Hill Historic District (Additional documentation, 2007)

Boston Transit Commission Building (former) (Listed in 2007)

### **New York**

304 Park Avenue South (Listed in 2005)

Blum and Blum Lofts (Listed in 2004)

Carnegie Hill Historic District (Certified in 2003)

Fred F. French Building (Listed in 2004)

General Electric Building (former) (Listed in 2004)

Ladies' Mile Historic District (Listed in 2003)

Look Building (former) (Listed in 2004)

Madison Square North Historic District (Certified in 2004)

Metropolitan Museum District (Certified in 2002)

NoHo East Historic District (Certified in 2003)

R.C. Williams Warehouse (Listed in 2005)

Riverside/West End Historic District (Certified in 2004)

Treadwell Farm Historic District (Listed in 2004)

Wall Street Historic District (Listed in March 2007)

### **What are the steps involved in donating a historic preservation easement to the Trust for Architectural Easements?**

1. The donor meets with a representative of the Trust, preferably at the property on which the easement is to be placed.
2. The donor submits an application to the Trust providing the Trust with basic information about the property; a refundable deposit of \$1,000, payable by check or credit card, accompanies the application.
3. If necessary, the Trust assists the donor in obtaining certification that the property contributes to its historic district from the National Park Service.
4. If the property is mortgaged, the Trust will work with the donor and the donor's mortgage lender(s) to request subordination from each mortgage lender.
5. Once National Park Service certification and lender subordination(s) have been received, the donor is advised to obtain a qualified appraisal of the historic preservation easement from an independent, qualified appraiser. If requested, the Trust can provide the donor with a list of appraisers with whom other donors have worked. The appraiser provides copies of the appraisal to the donor and the Trust.
6. The Trust sends the donor a closing package that includes the final easement and recording forms for signature and notarization, and the amount of the cash contribution requested to accompany the

- easement donation for the purpose of funding current operations and future easement stewardship.
7. Upon return of the closing documents by the donor, the Trust accepts the easement donation, and records the easement in the local land records.
  8. The appraiser finalizes the appraisal report, incorporating the date of donation and the recorded easement.
  9. The Trust sends the donor a letter acknowledging both the donation of the easement and the cash contribution, along with the required documentation for tax filing purposes.
  10. Annually thereafter the Trust inspects the exterior of the property to ensure it remains in compliance with the easement restrictions.

## **How can I determine if a property is eligible?**

To be eligible, the property must either be located in a registered historic district or be individually listed in the National Register of Historic Places. A registered historic district is one that is listed in the National Register of Historic Places, or a state/local historic district that has been certified by the National Park Service. For properties in registered historic districts, the building must be certified as contributing to the district by the National Park Service. There are no restrictions as to the use of the property; it may be a single or multi-family residence, or a commercial, industrial or institutional building. There are also no restrictions on a property's fair market value. For information regarding historic districts and properties listed in the National Register, please visit the National Register or contact the Trust.

## **Why should someone get a tax deduction for an easement donation on a property in a historic district when local ordinances prohibit the same kinds of actions prohibited by the easement?**

The value of the tax deduction can only be determined by a qualified appraiser and IRS guidance directs appraisers to consider existing restrictions/local ordinances when appraising the fair market value of an easement. Local ordinances vary, but some of the differences between restrictions placed by local ordinances and an easement granted to the Trust are described below.

Easement donations represent binding agreements between property owners and the Trust for Architectural Easements and cannot be amended or terminated. Such easements are binding upon future owners of the property and thus, the properties are restricted in perpetuity. Local ordinances, however, can be revoked or changed at any time. Further, in some instances the preservation standards used by local preservation commissions differ from the Secretary of the Interior's Standards used by the Trust, and often local preservation commissions have the authority and discretion to permit alterations and demolition as a result of economic development pressures. Moreover, unlike some local ordinances, easements granted to the Trust go further than just regulating changes; they prohibit demolition-by-neglect and require that the structural integrity of the entire building be preserved along with the historic character of the exterior. The Trust's easements are monitored annually and enforced faithfully, free of economic or political influences that often interfere with the regulation and enforcement of local ordinances. Conversely, a survey by the National Alliance of Preservation Commissions found that approximately 40% of all preservation commissions lack enforcement ability. Many also lack the proper procedures and funding to monitor the properties within their jurisdiction. The Trust for Architectural Easements maintains a stewardship fund of approximately \$12 million to ensure sufficient funding to monitor and enforce the easements it holds.

A research report, *Historic Preservation Options in New York City: Similarities and Differences Between*

Landmarks Preservation Commission Regulation and Donation of Preservation Easement, prepared by architectural historian Anthony Robins of Thompson & Columbus, Inc., provides an example of why federal historic preservation protections remain a necessity even where local preservation protections exist by examining the operation and effectiveness of the two programs in New York City.

### **Has the Trust for Architectural Easements accepted easements on properties that are not protected by local ordinances?**

Yes. Our mission is to protect as many historically-significant properties as possible. Federal designation qualifies a property for participation in the program, and the Trust accepts easements on any so designated property without regard to local protections.

### **How does this program compare to the Rehabilitation Tax Credit program?**

Both programs stem from the same legislation, and both provide benefits to the historic preservation effort. The Rehabilitation Tax Credit program provides a 20% tax credit for actual expenses incurred to rehabilitate qualified historic properties. The Rehabilitation Tax Credit program, however, only applies to income-producing properties, and after five years, no longer provides enforceable protection for the actual preservation of the property. The Federal Historic Preservation Tax Incentive Program applies to all qualifying historic properties, regardless of use (residential, multi-unit residential, commercial), and protects the historic character of the properties in perpetuity.

### **Are there costs associated with making an easement donation?**

Yes. Costs include an appraisal fee, bank service charges for properties that are mortgaged with certain lenders, and a cash contribution to the Trust. The cash contribution covers the Trust's operating expenses and stewardship fund, which is used for perpetual stewardship and enforcement of the easements. The amount of the cash contribution that may be deductible for federal income tax purposes is limited to the excess of the amount of cash contributed over the fair market value of any services provided by the Trust to or for the benefit of the donor. The Trust will provide you with an estimate of the value of any easement processing services you receive in connection with your Easement and related cash contribution. The Trust recommends consulting with a tax advisor regarding the deductibility of the fees and contribution relating to a historic preservation easement donation.

### **Is an easement-protected property open to the public?**

An easement on the property's exterior does not grant the public physical access to the property. The easement requires only visual access, or that the property can be seen and enjoyed from the public right-of-way. Annual monitoring, however, does require that property owners provide the Trust's staff with access to all sides, including the rear of the property for inspection.

### **What must I do before beginning maintenance projects on my property?**

Please contact the Trust to determine whether your planned maintenance work requires review by the Trust or not. Generally, cleaning and repainting elements the same color do not require Trust review but replacement, refurbishment, or restoration of features may require review.



1906 R Street, NW  
Washington, DC 20009  
1-888-831-2107  
[www.architecturaltrust.org](http://www.architecturaltrust.org)

*The Trust for Architectural Easements is a qualified  
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preservation of historic architecture.*

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