

## **Estate Planning With Conservation Easements**

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For reasons that I will briefly discuss below, 2007 is a great year to create a conservation easement.

Many families in New Hampshire accumulate wealth through their ownership of real estate. Property values continue to rise, along with property taxes. A sale of the property will likely result in a capital gains tax, currently 15%. The capital gains tax is calculated based on the difference between what you paid for it and the selling price. Thus, the longer you or your family has owned the property, the greater the capital gains tax will probably be. Property owners often do not want to see their land sold for development, but retaining ownership could result in very significant estate taxes, currently 45%.

An often successful solution is the creation of a conservation easement on the undeveloped portion of your property. It allows families to continue to own and enjoy the property while at the same time providing both federal income tax benefits as a charitable deduction and valuable estate tax benefits (and in some cases the complete elimination of federal estate taxes).

The Internal Revenue Service provides tax benefits if the conservation easement qualifies as a “qualified conservation contribution”. This is governed by Internal Revenue Code (IRC) Section 170(h) and US Treasury Regulations 1.170A-14.

The three essential ingredients are that: the property qualifies; the organization receiving the conservation easement is a “qualified organization”; and the easement itself is carefully drafted to include the proper language. For example, the terms of the easement must ensure that the property will be used for conservation purposes, such as a public access to a boat landing or hiking trail, protection of habitat or simply to preserve open space. A qualifying easement can also be designed to preserve an historic structure or important land.

Income tax benefits are based on the value of the deduction. This value is determined based upon comparable sales or by calculating the difference between the fair market value of the land before and after the conservation easement is created. In 2007, the IRS allows the value of the deduction to be up to 50% of your adjusted gross income (up from 30% in prior years). Any unused deduction may be carried forward for up to 15 years. In other words, if the value of the conservation easement is high relative to your gross income, you can carry forward your income tax deduction for up to 15 years until its full value is accounted for. Increasing the deduction from 30% to 50% and enlarging the carry forward from 5 to 15 years was the result of the Pension Protection Act. According to the legislation, the increases for 2007 will expire at the end of the year. While there are some bills in Congress to extend the 50% deduction and 15 year carry forward, it remains uncertain what Congress will do. Thus, 2007 is a great and perhaps unique year to create a conservation easement.

In terms of federal estate tax benefits, you may be entitled to exclude from your gross estate up to 40% of the value of the land containing the conservation easement (up to a maximum of \$500,000.00). For some, this could mean that no federal estate taxes are owed and more of your estate can pass to your beneficiaries. This can even be accomplished after a property owner's death (post mortem conservation easement). To qualify, the property must be owned by the decedent or member of the family at least 3 years prior to death.

For more details about conservation easements, charitable remainder trusts and other information about estate planning, please contact me.

Helpful websites that I recommend for more information about conservation easements include the Land Trust Alliance and the NH Forest Society:

<http://www.lta.org>

<http://www.spnhf.org>