

## **Common Questions with Conservation Easements**

*Questions and Answers provided by Kansas Land Trust, 16 East 13th Street, Lawrence, KS 66044, (785) 749-3297, [www.klt.org](http://www.klt.org), May 22, 2013*

### **What is a conservation easement?**

A conservation easement is a voluntary agreement between a landowner and a conservation organization, such as the Kansas Land Trust, that allows a landowner to limit the type or amount of development on their property while retaining private ownership and many uses of the land. The Kansas Land Trust accepts the easement with the understanding that it must enforce the terms of the easement in perpetuity. After the easement is signed, it is recorded in the county land records. The terms of the conservation easement apply to all future owners of the land. Other area land trusts include Heartland Conservation Alliance, Missouri Prairie Foundation, Platte Land Trust, and the Watershed Land Trust.

### **Why put a conservation easement on your land?**

Many farmers and ranchers have a deep-seated connection with their land and want to protect that natural heritage. A well-designed conservation easement allows a landowner to prevent unwanted uses but encourage traditional agricultural activities. It can be a valuable tool for estate planning as well, since an easement is likely to reduce the taxes paid by the beneficiary of the land. Perhaps most of all, an easement will provide a landowner with peace of mind in knowing that people with similar values and objectives will forever keep a vigilant watch over the land they love.

### **How do conservation easements relate to property rights?**

Every landowner is the holder of certain rights related to the use of land and its resources. Historically, some of these rights—such as mineral and timber rights—have been used, taxed, or transferred separately from outright ownership. Road and utility easements are other examples. A conservation easement arises out of this principle of separating and modifying land ownership rights.

A conservation easement is created by a landowner (the "grantor") who desires to transfer certain rights to a conservation organization (the "grantee"), under an agreement which governs the grantee's exercise of those rights. Working cooperatively, the grantor and the grantee identify appropriate uses for the land ("reserved rights") and detail activities which should be prohibited ("restricted uses"). For example, a landowner may transfer the right to use a property for residential development to the grantee. The grantee organization then holds that right, but is prohibited by the terms of the conservation easement from ever using it. Thus, it is assured that no future owner will have the right to use the property for residential development. Conservation easements are perpetual, restricting future land uses regardless of who may own the land in the future.

Land subject to a conservation easement is still privately owned and managed. All rights of ownership which have not been transferred to the grantee may be exercised by the current owner.

For example, a landowner may transfer the rights to develop a property for commercial, industrial, or multi-residential purposes while retaining rights to use the land for farming or for a personal residence.

### **How a conservation easement might impact property taxes?**

Local real property tax assessments are based on a property's fair market value, which considers the property's development potential. If a conservation easement reduces the development potential of the property and limits its use, then the level of assessment and, accordingly, the amount of real property taxes, may be reduced.

### **What kinds of land can be protected by a conservation easement?**

Any land whose conservation is in the public interest - prairies, woodland, wetlands, farmland, ranchland, scenic areas, riparian areas, and undisturbed natural areas.

### **How long does a conservation easement last?**

It can vary, but easements are generally perpetual, and apply to all present and future owners of the land.

### **Will an easement grant public access to my property?**

Not unless specified by the landowner. With advance notice with the landowners, the land trust will have access to annually visit the property to assess compliance with the terms of the conservation easement.

### **Who owns the land? Can it be sold?**

The landowner who signed the conservation easement remains the owner of the land. The land can be bought and sold. However, the easement "runs with the land" and applies to all future landowners.

### **Can property owners still live on and use the land?**

Yes. Easements typically allow for changes and additions to houses, construction of farm buildings, and other customary agricultural practices. Easements may be drafted in various ways. For example, some landowners decide that, for the protection of the land, all development rights should be excluded, so that the land will always look substantially as it does now. Another might wish to allow the option of adding an additional future dwelling. Usually buildings are limited within designated building site envelopes.

### **What types of uses are not allowed by a conservation easement?**

In order to protect the conservation values of the land, a conservation easement will prohibit industrial and most commercial activities, restrict subdivision and placement of structures, and

limit activities around natural areas such as a prairie or wetland that might harm those natural systems. In essence, the landowner gives up those development rights and uses that would damage or destroy those features that make the land natural and beautiful.

### **Who is responsible for maintenance and liability on a property protected by a conservation easement?**

In retaining ownership and control, the landowner remains responsible for all maintenance and liability issues. However, the land trust is responsible for assuring that the terms and conditions of the easement are met. The land trust monitors easement properties annually to confirm that the conservation values protected by the easement are indeed being preserved. If the terms of an easement are not being followed, the land trust will attempt to work with the landowner to correct the problem. If the problem is still not corrected, the land trust has the legal right to enforce the easement.

### **How much is a conservation easement worth?**

The value of an easement varies with each situation. Generally, the more the easement restricts the uses of the property and the greater the chances that the property might otherwise be developed, the higher the value of the easement. To determine the easement value, the land must be appraised at both its fair market value without the easement restrictions, and its fair market value with the easement restrictions. The difference between these two appraisals is the easement value. Generally, the land trust does not conduct appraisals, but maintains lists of appraisers.

### **How do future owners of a property know that a conservation easement exists?**

The easement is recorded in the county land records. Any title search should reveal the existence of the easement. Even if future property owners are unaware of the easement, they remain legally bound by it.

### **Is land, subject to a conservation easement, immune from condemnation?**

A conservation easement will not automatically prevent public condemnation. The State's power of eminent domain will supersede most private covenants, easements or other legal devices. However, since the land trust would have a property right through a conservation easement, in most instances the land trust will partner with the landowner to oppose government actions that would damage the conservation values of the property.

### **Can a conservation easement be created through a testamentary gift?**

Gifts of land and conservation easements can be made to the Last Will and Testament. While testamentary gifts do not result in a charitable contribution for income tax purposes during the donor's lifetime, such gifts may dramatically reduce the estate tax liability faced by the next generation. Codicils to a will can be an effective interim measure to protect land while planning is underway.