

## FOX HUNTING & CONSERVATION EASEMENTS

Every fox hunt in America has members who own farm land over which fox hunts are held regularly. How many of these farms are protected by conservation easements?

Conservation easements are essential to the preservation of open land. Without open land, there will be no fox hunting. Fox hunting easements do not protect land in a permanent fashion.

Easements are of temporary value. Although these fox hunting easements have some value, keeping farms as open space for recreational use, including fox hunting, deer and turkey hunting and other outdoor sports by employing conservation easements, is essential to the future of these sports.

Every hunt in America should put the issue of conservation easements on their agenda for consideration. Here are some ideas and sources for consideration.

Conservation easements preserve land use in perpetuity. These conservation easements can prohibit land uses such as subdivisions, shopping centers, malls, factory farms and many other undesirable practices. Language in these conservation easements can list those activities which are permitted such as farming, parks and many other uses which are consistent with outdoor recreation. Real estate developers can be effectively held at bay.

Generally speaking, a conservation easement is a legal document, often several pages in length, through which restrictions are placed upon real estate and these restrictions are conveyed to a qualified conservation organization which receives the donated restrictions and limitation on the real estate in question, protects these prohibitions on land use on a regular basis and defends these limitations in the event real estate developers, heirs and others try to terminate the land restrictions. Often, these qualified conservation organizations are publicly supported charities.

There are costs to the landowner connected with these transfers. First of all, every landowner interested in making such a gift should retain an attorney who has experience in drafting and implementing a conservation easement. This attorney should be capable of employing a qualified appraiser who can evaluate the property at its fair market value before the conservation easement is placed on the property and the value after said conservation easement is in place. I cannot emphasize enough the need to hire top quality appraisers. The Internal Revenue Service has effectively attacked poor appraisals which do not have the factual support for their opinions. A survey which can vary from state to state is also necessary. There are metes and bounds surveys and planimetric surveys. The later is less expensive than the former, but the requirements vary from state to state as well as different qualified private conservation organizations. Most states and conservation organizations will charge the landowner fees for monitoring the easement and defending it. Your attorney should be experienced in advising the landowner with regard to the available conservation organizations whether public or private.

The conservation easement is a valuable estate planning tool. A properly drafted conservation easement can produce a deduction in the year of the transfer up to 30% of the donor's income in the year of the donation and for the following five years. Tax planning can reduce state and federal taxes substantially and can play a substantial part in keeping the land in the hands of a family. Often, the property in question has to be sold in order to pay the estate tax on the value of the land. This problem can be avoided by good tax planning. A nationally recognized attorney in this field is:

Steven J. Small, Esq.

He has lectured and written extensively on the subject in question. His address is:

Preserving Family Lands  
P.O. Box 2242  
Boston, MA 02107

I have found his book "*Preserving Family Lands: Book II*" a very useful booklet which describes the benefits and problems connected with the creation of a conservation easement. The book in question is only \$15.00 and is worth a great deal more.

Another excellent source for the basic parameters of conservation easements is provided by a group in Washington, D.C. It is as follows:

Land Trust Alliance  
Telephone: 202-638-4725  
1319 F Street, N.W.  
Suite 501  
Washington, D.C. 20004-1106

They have several publications and "how-to" booklets on the mechanics of creating conservation easements, as well as conservation sample documents and other very useful information. I have personally used these "how-to" booklets when I make presentations on conservation easements. They are inexpensive and will be of substantial value to anyone interested in the details.

There are notable success stories in the creation and use of conservation easements to protect fox hunting lands. The one with which I am the most familiar is the Piedmont Environmental Council which operates in a seven or eight county area in northern Virginia. They have a \$1,000,000 annual budget and are experts in advising landowners regarding conservation easements. In addition, they are an important lobbying group on behalf of open spaces. There are several fox hunts in that area that have relied extensively on the expertise and knowledge of this group. They can be reached at the following address:

Piedmont Environmental Council  
45 Horner Street  
Box 460  
Warrenton, VA 20188-0460

540-347-2334

There are tax benefits which I have not mentioned, but are important considerations including property tax matters, both at the state level as well as the sale of tax credits which many farmers and others find extremely useful since they do not have enough annual income to use the deductions which are available.

The Masters of Foxhounds Association's National Office will help you to identify issues, experts and other facets of this important land conservation concept.

Edward S. Bonnie  
FROST BROWN TODD LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202-3363  
(502) 589-5400

983771vv1