



Preserving Virginia's scenic, natural, historic, recreational,
and open-space lands for future generations.

www.vof.org

TEN STEPS TO CONVEYING AN EASEMENT TO VOF

Step 1: Consideration of Placing an Easement on Your Property

Contact a Virginia Outdoors Foundation (VOF) regional office to request information and to discuss the general easement process. After that, if you are interested in further exploring the possibility of donating an easement, please call the regional office to discuss your goals with a VOF staff member. The VOF staff person will conduct preliminary research into your property's conservation values and review the project with a team of colleagues to gain preliminary approval to proceed with your easement proposal.

Step 2: Site Visit.

If the conservation values of your property meet VOF's criteria and your personal objectives for the land are compatible with VOF's requirements, we will arrange to visit it. On site we will observe and inventory the features of your property, its natural resources, and its open-space characteristics. We will discuss your options for an easement that will meet your goals and at the same time protect the conservation values of the property.

Step 3: Getting Additional Help.

Once you understand the ramifications of placing an easement on your property and feel comfortable that such an easement will meet your goals for the property, you should discuss this matter with your attorney or tax advisor. If your property has a mortgage lien on it, you should also discuss the potential easement with your mortgage lender, because the mortgage lender will be required to subordinate its lien to the easement. In addition, many landowners will talk to an appraiser at this juncture to get a ballpark idea of the potential tax benefits of placing an easement on their property.

Step 4: Preliminary Agreement.

Your VOF staff person will work with you in developing a "Terms Agreement" confirming the basic requirements that will be included in the deed of easement. If you wish to proceed with the easement at this stage, you will be asked to sign the Terms Agreement. You will also have to fill out and sign a VOF application, an "Open-Space Easement Disclosure" and (if applicable) a Preservation Trust Fund application.

Step 5: Title Work and Property Boundaries.

After the Terms Agreement is signed, VOF will order a title search of your property. Upon receipt of the title report, VOF staff will analyze all deeds and survey plats and utilize GIS mapping programs to determine if the boundaries of your property are clearly delineated. If this analysis finds the property descriptions to be lacking in accurate data, new surveys may be required for a portion (or all) of the property.

Step 6: Staff Review.

A VOF project review team will discuss the characteristics of your property and the proposed easement terms and will analyze any title or property description issues and what steps may be necessary to resolve them. The team may suggest additional or modified easement terms to ensure that the project can be recommended favorably to the Board of Trustees (the “Board”).

Step 7: Board of Trustees Meeting Preparation.

- (a) Draft Deed: Your VOF staff person will draft a deed of easement for you to discuss with your attorney. Between your VOF staff person and your attorney, multiple revisions may be necessary to ready the project for submission to the Board. The final draft of the deed must be approved by you and your attorney on or before the easement draft deadline prior to the board meeting at which you wish to submit your easement for consideration. (Please discuss deadlines with your VOF staff person.)
- (b) Easement Summary: Prior to submission of your easement to the Board, you will receive a summary of your easement and pertinent maps identical to the material the Board will review. Please review these documents carefully to make sure they accurately reflect the terms that you have agreed to.
- (c) Submission to the Board: If you wish to have your proposal proceed to the board meeting for its consideration, you will have to pay the \$1500 Processing Fee for Acquiring Easements (“Processing Fee”) by the due date shown in the table below.
- (d) Fees: In addition to the Processing Fee, there is an additional fee of \$3000-3500 for preparation of a Baseline Documentation Report. Preservation Trust Fund (PTF) grants are available to help income-eligible landowners with expenses, including the Processing Fee and other costs of conveying an open-space easement to VOF such as legal, appraisal, and survey costs. Priority is given to applicants who demonstrate financial need and who wish to convey an easement on a family farm. If you think that you may qualify, discuss this with your VOF staff person.

Step 8: Board of Trustees Meeting.

- (a) Your easement proposal must be approved by the VOF Board of Trustees. Please refer to the VOF website for Board of Trustees meeting dates. Staff will present your proposal to the Board with its recommendation.
- (b) The Board may approve the proposal, approve it conditioned upon modification(s), or disapprove it. The Board’s approval does not obligate you to complete the easement process and record the easement. You may finalize and record the easement any time within one year of Board approval. After that, if you wish to record the easement, your project proposal must be resubmitted to the Board with a \$1,000 reconsideration fee. However, if there are no changes in the terms and conditions, the one-year recordation period may be extended by the VOF Executive Director, who may also waive the fee for good cause shown.
- (c) Prior to recordation, a proposed change in any terms of the easement that would result in a less restrictive easement than the one approved by the Board must be resubmitted to the Board for reconsideration.

Step 9: Baseline Documentation Report (BDR).

- (a) A Baseline Documentation Report (BDR) must be completed before your easement is finalized. (If you intend to apply for tax benefits after recording the easement, the federal tax program for conservation easements requires that you make available to VOF a BDR describing the characteristics and condition of your property prior to recordation of the easement.) The BDR contains maps and photos of your property and related documents. It establishes in detail the condition of the property at the time of the gift and becomes the basis of comparison for future monitoring of the easement.
- (b) VOF prepares the majority of BDRs for landowners. However, entities other than VOF may prepare BDRs. After Board approval, you will be asked to decide whether you want VOF staff or a different entity to prepare your BDR. If VOF prepares the BDR, a fee of \$3,000-\$3,500 will be charged at the time the report is completed. If the report is prepared by a different entity, it must meet VOF quality standards, and a BDR review fee of \$1,500 will be charged when you submit the report to VOF. Whether VOF or a different entity prepares the report, it will be sent to you for your review and, if necessary, corrections. Once the information in the BDR is accurate, all owners of the property must sign the “BDR Acknowledgment Form” and return it to VOF.

Step 10: Finalizing Deed of Easement and Recordation.

- (a) Your attorney will send the deed of easement to VOF for final review. We will suggest final edits, if any, and return the deed to your attorney for final document preparation and the obtaining of signatures. All legal owners must sign the deed, and any mortgage lender and its trustee(s) must sign the deed to subordinate the deed of trust to the deed of easement. VOF signs the deed last. The VOF staff member authorized to sign deeds of easement will not sign the deed until it is verified that the signed VOF Application and Disclosure forms, as well as the BDR and the BDR Acknowledgement form, are in our files. After such verification, VOF signs the deed.
- (b) VOF will send the fully executed deed of easement back to the title company handling your project, which, after doing a final title search (“performing a title bring-down”), will record the deed in the courthouse of the locality(ies) in which the property is located.

Subordination of deed of trust

A lender holding a deed of trust on your property must subordinate its deed of trust to the easement to protect the easement in the event of foreclosure and also for your easement to be a tax-deductible charitable contribution under federal tax law. You or your attorney should contact the lender early in the process, both to confirm willingness to subordinate and because the lender’s review may take a long time. In addition, the lender may require an appraisal prior to agreeing to subordinate its lien, which may affect the sequence of events set forth here or the costs of completing your easement. Potential easement donors often experience significant delays and sometimes other problems getting a lender to subordinate its lien. In some cases, landowners have had to refinance a loan in order to get a lender willing to subordinate its deed of trust to the VOF easement.

Appraisal

VOF does not require an appraisal for a gift of easement. However, in order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift such as a gift of easement, you must engage an independent appraiser to determine the value of your gift. The IRS requires that the appraisal be made by an IRS-defined qualified appraiser; a Certified General Appraiser will probably qualify. We do not make specific recommendations as to which appraisers you should use, and we are not involved in the appraisal process. To

satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to recordation of the gift and no later than the due date (with any extensions) of your tax return.

Timing of Easement Donations

We recommend that you take plenty of time to think through the donation of an easement, because an easement is forever. If you have decided to donate an easement and wish to do so prior to the end of a particular calendar year for tax purposes, there are several reasons to begin the process as early as possible in that calendar year. It is important to have your tax advisors working closely with you in making decisions about your easement as they can best stay attuned to current tax law, filing requirements, and your personal situation.

- There is a limit on the amount of tax credits that the Department of Taxation may issue. The tax credit ceiling is currently \$75 million per calendar year.
- The Department of Taxation does not guarantee that any LPC-1 Applications for Land Preservation Credits filed after the first business day of November will be processed in time to issue the credits and enable you to make transfers of credits for the same year. In order to meet this filing deadline for projects going to the board in the second half of this year, you should be in contact with your attorney, your appraiser, and your tax advisor so that their respective tasks can be coordinated and completed in order to meet this deadline.
- Tax credits of \$1 million or more will be issued by the Department of Taxation only if the conservation value of your donation has been verified by the Director of the Department of Conservation and Recreation (DCR), based on criteria adopted by the Virginia Land Conservation Foundation (VLCF). In order to avoid an adverse post-filing decision from DCR, you may obtain a pre-filing review of the conservation value through DCR. Contact Suzan Bulbulkaya at DCR (804) 371-5218.
- Several steps, such as the appraisal, bank subordination, legal review, and tax credit registration, may take a long time to complete.
- VOF staff, landowners' attorneys, appraisers, and others involved in the easement process will have more time to work on projects in the first three quarters of the year, and projects incomplete by the fourth quarter may exceed staff's capacity to complete before the end of the year.