



## Historic Preservation Easements Q & A

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

A preservation easement allows the owner of a historic property to retain title and use of a property and, at the same time, ensure its long-term preservation. An easement is a legal contract by which the owner agrees the property will not be changed in a way that would compromise its historic and architectural integrity. It is granted, usually into perpetuity and is filed in the county land records. The easement runs with the land and is binding on both the owner who grants it as well as on all subsequent owners. The owner retains the major interest in the property and can sell or will it to whomever he or she wishes.

Each property is unique and a preservation easement will define the special qualities of each property that is to be protected. Some of the more common features listed for protection are the facade, the interior, the grounds, view sheds, or air rights.

In order to secure the long term protection of a historic property, a preservation easement may include, but is not limited to, the following:

- Protection against inappropriate alterations to the property or surrounding grounds.
- Limitation on the alterations or additions that may be made to the property.
- Requirement that the structure be properly maintained to preserve historic character and structural integrity.
- Oversight of future development of the property to prevent adverse impacts on the integrity and character of the property including the development of open space.

### *Why give a preservation easement?*

Reasons for giving a preservation easement may include:

- Protecting a donor's personal interest in preserving their family's home.
- Ensuring the preservation of a building that an owner has spent considerable time and resources restoring.
- Providing property and income tax savings for the property owner.
- Reducing estate, gift and capital gains taxes.
- Benefiting one's community through long-term preservation of a historic structure.

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

Each easement agreement is unique. The terms of the agreement are negotiated between a qualified organization, such as CAP, and the property owner. The owner of the property subject to a preservation easement assumes responsibility for securing CAP's approval before undertaking

significant changes to the property, such as altering the building's historic elements or constructing an addition. The owner also agrees to repair and maintain the property to an agreed-upon level of care and is responsible for using the property in a manner consistent with the terms of the easement.

### ***How long does an easement last?***

Most easements are given in perpetuity. An easement of a shorter duration may be negotiated, but if an easement is not granted in perpetuity the donor is not eligible for a tax deduction.

### ***Who can donate an easement?***

Any fee simple owner of a historic property may give an easement. This includes any public, private or nonprofit owner of historic property.

### ***Who accepts preservation easements?***

The Internal Revenue Service allows charitable deductions for the donation of preservation easements to "qualified organizations." These are defined as governmental units or eligible charitable organizations which have a "commitment to protect the conservation purposes of the donation and have resources to enforce the restrictions." CAP, a private nonprofit 501(c)(3) charitable organization, is a qualified recipient of preservation easements. CAP requires owners to provide an appraisal of the property, if a value has not been established previously (by appraisal or sale) in the calendar year that the donation is made.

### ***What are the tax advantages of preservation easement donations?***

Because preservation easements serve a public benefit by protecting the nation's historic resources, the federal government has established income tax incentives available to qualified donors. Under the Internal Revenue Service Code, taxpayers may claim a tax deduction for preservation easement donations if the donation reduces the value of the property and the donation meets I.R.S. guidelines (See 26 C.F.R. § 1.170A-14). The amount of the deduction is equal to the appraised value of the preservation easement.

The donation of a preservation easement to CAP may reduce federal estate taxes that would otherwise be payable at the donor's death. If the gift is made during the lifetime of the donor, the value of the gift will not be included in the value of the donor's estate. As local property tax assessments are based on the fair market value of the property, the municipality when appraising the property for assessment purposes can consider the impact of the donation of a preservation easement on the property's value.

### ***Are there any expenses associated with an easement donation?***

CAP does not charge for its services in connection with an easement donation. Since the cost to CAP associated with the preparation and monitoring of the easement can be substantial, we do ask easement donors to make a one-time voluntary contribution equal to 5% of the appraised easement value to help sustain the program. Non-CAP donor expenses may include an IRS filing fee (for easements valued above \$10,000), fees for legal consultation, tax advice or appraisal preparation. Generally, these expenses, as well as any donation to CAP, are more than offset by the tax advantages of an easement donation.