

ACQUISITIONS 101

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Acquisitions Overview

1. Fee Acquisition- acquisition of fee interest in property (the whole “bundle of sticks”) from owner
Pros: 100% rights in, and use of, property subject only to any prior rights that have been conveyed
Cons: \$\$\$, management and liability responsibility
2. Easement – acquisition of the right to use portion of property for particular use
Pros: less cost (payment upfront), limited management, and often in perpetuity (runs with the land)
Cons: less ability to control use of the entire property, limited use, and property owner may seek liability protection for use
3. Lease – acquisition of right to use portion of property for particular use
Pros: less cost (annual payments), limited management and liability
Cons: often for limited period, less ability to control use of entire property, limited use and assignability, and property owner may seek liability protection for use
4. Conservation Easement – acquisition of right to enforce permitted and prohibited uses of property
Pros: property owner may be able to receive tax benefits if donated, may receive endowment funds in connection with donation for enforcement, perpetual rights
Cons: affirmative obligation to monitor and enforce, less ability to control use of entire property, limited use and assignability, property owner may seek liability protection for use

CRITICAL DATES, DUE DILIGENCE AND CLOSING CHECKLIST

BUYER: _____
 SELLER: _____
 PROPERTY: _____
 CLOSING DATE: _____
 MEC: _____
 "MEC" = mutual execution of contract

"B" = Buyer; "S" = Seller; "L" = Lender; "TC" = Title Company

Item	Responsible Party	Deadline/Status/Comment
Earnest Money Deposit	B	___ days after MEC, or specific date
Loan Application	B	
Loan Commitment	B; L	
Title Insurance Commitment	S; TC	
Title Objection	B	
Off-Record Matters/Seller's Property Disclosure (may include Seller deliverables such as prior surveys and environmental reports)	S	
Inspection/Off-Record Matters Analysis/Special Taxing Dist.	B	
Survey	S [or B]	
Survey Objection	B	
Phase I Environmental Report	B [or S]	
Phase I Environmental Report Objection	B	
Appraisal	B	
Appraisal Objection	B;L	
Property Insurance	B	
Resolution Deadline	B; S	
Settlement Statements, Prorations and other Closing Documents	S; B; TC	



CONSERVATION EASEMENTS – TAX BENEFITS AND DUE DILIGENCE

1. Tax Benefits

- Donation:
 - IRS requirements and tax benefits (tax deduction)
 - State requirements and tax benefits (tax credit)

2. Due Diligence Guidelines

There are several important steps throughout the conservation easement process. First, the grantee/land trust must ensure that the easement meets its internal criteria for conservation. Second, the property must meet the IRS requirements for donating a conservation easement. Third, the grantee/land trust must be comfortable that the title and ownership are clear to ensure that the conservation values will be protected in perpetuity. To determine if the easement meets these requirements, several steps of due diligence are completed. Often, land trusts may seek the advice of an attorney to review all relevant due diligence. The steps of due diligences include the following:

Title Review

As soon as possible, a copy of the updated title commitment with all of the documents referenced in Schedules A and B for the property should be reviewed. The title commitment will shed light on whether there is a mortgage, severed mineral interests, easements, water rights, and other issues of ownership that may need to be cleared up prior to donating an easement.

Notes: _____

Easement Documentation (Baseline) Report

An Easement Documentation (Baseline) Report (EDR) must be completed for every conservation easement. This document describes the conditions on the property at the time the easement is donated. Please see the “Baseline Report Checklist”, which outlines all of the necessary information to include in the report. Once the EDR is completed, the grantor/landowner and grantee/land trust should formally acknowledge that the EDR accurately depicts the current conditions of the property. Often this is done by attaching to the Deed of Conservation Easement an exhibit entitled “Acknowledgement of Easement Documentation Report” which is signed by the grantor/landowner and grantee/land trust.

Notes: _____



Mineral Remoteness Letter

If the title shows that there are any severed mineral interests, a “remoteness letter” must be conducted. This research is conducted by a qualified geologist to determine whether the severed minerals are likely to be extracted. To qualify for a tax deduction, the report must state that the probability of mineral extraction through surface methods “is so remote as to be negligible.” If this determination cannot be made, the easement will not meet IRS requirements since the extraction will have a negative impact to the conservation values.

Notes: _____

Subordination Agreement

If the title shows that there is a mortgage, a subordination agreement with the lender must be secured. The agreement will ensure that the foreclosure of the property will not result in the extinguishment of the conservation easement. Please refer to the “Subordination Agreement” and “Subordination Agreement Order” documents for more information.

Notes: _____

Environmental Assessment

If necessary (either due to funders’ requirements or suspicion that there may be a problem), a Phase I Environmental Assessment should be conducted. An environmental hazards assessment conducted by an experienced consultant lessens the chance that the property may be unsafe for public use, be contaminated, have high clean-up costs, or expose the land trust or funders to liability.

Notes: _____

Appraisal

If a charitable donation is claimed by the landowner, an appraisal of the value of the easement must be completed. It is important the appraiser have experience with valuing conservation easements and understands the proper approach to value. Many land trusts never see the appraisal (although recently many land trusts have adopted internal valuation policies), but it will still be important for a land trust to know the percentage



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value of the easement to the fair market value of the property to establish the relative ownership between grantor/landowner and grantee/land trust in the event of condemnation or other termination of the Deed of Conservation Easement.

Notes: _____

Endowment

To protect the conservation easement in perpetuity, many grantees/land trusts ask for a donation to their stewardship endowment.

Notes: _____

Purchased Easements

If the conservation easement is purchased by the land trust, there may be several additional requirements, such as a contract which sets forth the purchase price and terms of sale and the land trust may want to obtain a title insurance policy for the value of the conservation easement. Funders will also typically require settlement statements and other closing documents.

Notes: _____

