

Preservation Easement Program Information**What is a preservation easement?**

A preservation easement is a legal agreement that gives the easement holder a responsibility to protect the visual and structural integrity of a particular historic structure, even though that structure is actually owned by another person. The intent of the preservation easement is to prevent anyone from demolishing or severely altering the historic building without the permission of the easement holder.

The owner retains all the usual private property rights except for the right to destroy the property. Alterations, improvements, and even additions to the structure are allowed, as long as they do not compromise its historic character. At Utah Heritage Foundation, we are eager to work with the owner of a property on which we hold an easement, not only to preserve the historic character of a building but also to make it a comfortable and desirable place in which to live or work.

Why are easements important?

Many people interested in older buildings are under the false impression that if a building is “historic,” it is somehow automatically protected from destruction. In reality, a listing on the National Register of Historic Places does not prevent an owner from demolishing a building. In some cities, local preservation ordinances do provide a measure of protection for historic properties. Many local ordinances, however, only provide for a delay in the demolition process. An easement, on the other hand, is a legal document that insures the preservation of a historic property in perpetuity.

How can easements benefit property owners?

Granting a preservation easement can possibly qualify an owner for some financial incentives. First, the assessed value the property may be lowered or stabilized, resulting in property taxes that are lower or at least held to their current rate. Some residential properties may not see much of a difference, as the easement would not diminish a house’s value for use as a home. The savings, however, may be substantial in the case of urban properties that are zoned to allow buildings much larger than the existing historic structure and in the case of rural properties where the easement precludes extensive development.

Second, a property owner who grants an easement to a qualified tax-exempt organization such as Utah Heritage Foundation can qualify for an income tax deduction under the charitable contribution clause. Some restrictions apply. As with any tax issue, you should consult your accountant to find out how these easement benefits could affect your specific financial situation.

Finally, easements that lower the assessed value of a property can also reduce estate, gift, and capital gains taxes. These savings will, of course, depend on the particular property in question and the financial situation of the easement donor.

What does a preservation easement cover?

Most of the preservation easements held by Utah Heritage Foundation are facade easements which pertain to the exterior envelope of the building. The interior of the building is not usually included in the scope of the easement; however, structural elements are indirectly covered since the exterior of the building obviously cannot be preserved if the structure holding it up is allowed to collapse. Naturally,

the easement also prohibits alterations to the surrounding grounds that would mar the exterior appearance of the building or the site in general, such as rubbish heaps, ash dumps, and utility towers. Secondary structures such as garages or utility sheds are allowed but their design and approval must be approved by Utah Heritage Foundation prior to their construction. For projects of this scope, forward planning is always encouraged.

Preservation easements may also be applied to land. For example, the owner of a farm who does not wish his/her land to be developed can grant an easement restricting future development of the property. Land preservation easements have become an important tool for open space preservation in some parts of the country and have been used by conservation groups to protect wildlife habitat.

How do easements impact owners' use of their property?

Utah Heritage Foundation is happy to work with the owners of buildings on which we hold easements to accommodate their needs and desires for expansion or modification of their structures. The key to success is simply to begin discussion of one's plans at the conceptual stage so that approval can be agreed upon before any work is actually started. In this way, the Foundation can fulfill its duty to insure that the historic integrity of the site will not be compromised. Often, the Foundation can provide valuable advice for getting work done right and saving money as well.

As a preservation easement holder, it is Utah Heritage Foundation's responsibility to conduct regular inspections of its easement properties to confirm that they are being maintained in accordance with the terms of the easements. The inspections also allow the Foundation to monitor the condition of a property over time and make recommendations to property owners for maintenance work which will prevent small problems from becoming large problems. Most inspections turn out to be testimony to the dedication and care lavished by owners on their historic properties. In the rare cases where a violation of the easement has occurred, the Foundation is legally empowered to correct the violation at the owner's expense.

How long does an easement last?

The length of time that an easement will run is specified in the easement document itself and can be any period agreed upon by the signers of the easement. However, most preservation easements, including the ones held by Utah Heritage Foundation, are "granted in perpetuity" and "deemed to run with the land," meaning that they last forever, no matter how many times or to whom the property is sold. This insures that the protection offered by the easement will not cease just because a building has a new owner.

How do easements get started?

Utah Heritage Foundation acquires easements as free will donations by the property owner. The owner of a historic property who wants to insure that it will not be destroyed or inappropriately altered by subsequent owners can grant the Foundation a preservation easement on the property. The terms of such an easement can be written in any manner that the owner wants as long as they are acceptable to the Foundation. The Foundation can provide a boilerplate easement document that provides a framework of legal language that is acceptable to the Foundation.

For more information about the UHF Preservation Easement Program visit our web site at www.utahheritagefoundation.org and click on Resources. For questions, contact Elizabeth Bradley-Wilson, Assistant Director, at elizabeth@utahheritagefoundation.org or (801) 533-0858 x 103.



Preservation Easement Donation Process Checklist

Building Name: _____

Property Address: _____

Easement Grantor: _____

Email: _____ Telephone: _____

I. DONATION

A. Application

Date Received: _____

- Owner information
- Statement of Encumbrances
- Description of architectural and/or historic significance
- Photos of all elevations and significant details
- Written description of property condition
- Renovation plans, if any
- Zoning information/development in surrounding neighborhood
- Description of threats to property
- Appraisal
- Application fee and UHF Membership

B. Staff Report

- Staff evaluation indicates property has potential to meet acceptance criteria.
- Staff report complete.

C. Easement Donation Review

- Acceptance of easement donation by UHF Historic Properties Committee.
Date: _____

D. Board Approval

- Easement donation accepted by UHF Board of Trustees or Executive Committee.
Date: _____

II. PREPARATION FOR RECORDING

A. Fees

- Staff has clarified all fees and fee structure with Grantor.
Date: _____

B. Baseline Documentation

- B&W photos and color slides as specified in UHF Easement Procedures.
- Site plan sketch or plat map.
- Detailed written description of building and its condition, including systems and materials checklist.
- Additional historic or architectural info (SHPO, property tax data, tax photo).
- Documentation of development plans which will impact property.
- Detailed description of other conservation or cultural values, if associated.

C. Easement Document Preparation

- Proposed easement document sent to grantor.
 - Easement document approved by grantor.
- OR
- Grantor's and Historic Properties Committee's attorneys complete document negotiations.

D. Mortgage Subordination

- Subordination Agreement(s) signed by mortgage holder(s) provided by grantor.

E. Tax Benefit / Gift Substantiation

- Grantor has provided an appraisal that documents the before and after valuation of the easement.
- Staff has reviewed the appraisal and has considered signing IRS Form 8283.
- Gift acknowledgment letter has been sent to grantor.

F. Fees Paid to UHF

- Monitoring and legal defense fee.
- Baseline documentation fee.
- UHF incurred legal fees associated with easement donation.
- UHF incurred fees for the use of experts.

G. Signing

- Easement document signed by grantor and UHF.
- Easement document notarized.

H. Recording

- Easement document and recording fee taken or sent by UHF staff to appropriate County Recorder's Office. Date: _____
- Recorded easement document received at UHF office. Date: _____