

STANDARD 9

Ensuring Sound Transactions

Land trusts work diligently to see that every land and conservation easement transaction is legally, ethically and technically sound.

PRACTICES

A. Legal Review and Technical Expertise

1. Obtain a legal review of every land and conservation easement transaction, appropriate to its complexity, by an attorney experienced in real estate law
2. As dictated by the project, secure appropriate technical expertise, such as in financial, real estate, tax, scientific and land and water management matters

B. Legal and Financial Advice

1. Do not give individualized legal, financial or tax advice when providing transaction-related information
2. Recommend in writing that each party to a land or conservation easement transaction obtain independent legal, financial and tax advice

C. Environmental Due Diligence

1. For every land and conservation easement transaction, conduct or obtain a preliminary environmental investigation, transaction screen or Phase I assessment to identify whether there are any conditions that pose environmental risks, and take steps to address any significant concerns

D. Determining Property Boundaries

1. Determine both the legal description and physical boundaries of each property or conservation easement
- 2. If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field

E. Conservation Easement Drafting

- 1. For every conservation easement,
 - a. Individually tailor it to the specific property
 - b. Identify the conservation values being protected
 - c. Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
 - d. Avoid restrictions and permitted rights that the land trust cannot monitor and enforce
 - e. Include all necessary and appropriate provisions to ensure it is legally enforceable
- 2. Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)

F. Title Investigation and Recording

- 1. Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire
 - a. Update the title at or just prior to closing
- 2. Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values
- 3. Promptly record land and conservation easement transaction documents at the appropriate records office

G. Recordkeeping

- ▲ 1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed
- 2. Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss
- 3. Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity

H. Purchasing Land or Conservation Easements

- 1. When buying land, conservation easements or other real property interests, obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price
 - a. However, a letter of opinion from a qualified real estate professional may be obtained in the limited circumstances when:
 - i. A property has a very low economic value
 - ii. A full appraisal is not feasible before a public auction
 - iii. Or the amount paid is significantly below market value
- 2. In limited circumstances where acquiring land, conservation easements or other real property interests above the appraised value is warranted, contemporaneously document:
 - a. The justification for the purchase price
 - b. That there is no private inurement or impermissible private benefit

I. Selling or Transferring Land or Conservation Easements

1. When selling land, conservation easements or other real property interests,
 - a. Establish protections as appropriate to the property
 - b. If the sale is to a party other than another tax-exempt organization or public agency, obtain an independent appraisal by a qualified appraiser or a letter of opinion from a qualified real estate professional to determine the value of the asset and to support the selling price
 - c. Select buyers in a manner that avoids any appearance of impropriety
2. When selling or transferring conservation land or conservation easements to another tax-exempt organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities