

RESOURCES FOR EASEMENTS



A STEP BY STEP GUIDE FOR CONSERVATION EASEMENT DONORS



Thank you for considering a donation of a conservation easement to Alachua Conservation Trust (ACT). This guide is to help you better understand the procedure ACT follows and the legal requirements imposed by state and federal laws. If you are uncertain about any of the steps involved or for any additional information, please do not hesitate to contact us.

1) Property owners and Alachua Conservation Trust's representative tour the property.

This visit will give the property owners and the Alachua Conservation Trust (ACT) representative an opportunity to review the property and discuss conservation options. This visit gives the property owners time to ask questions to see if their interest in conserving the land can be met by ACT. During or following the visit the owners should complete a landowner questionnaire.

2) Review by the projects committee of Alachua Conservation Trust.

The projects committee of the ACT Board of Directors reviews all potential land protection projects with the staff to determine if it is appropriate for ACT to pursue the easement at this time.

3) The property owners are advised to consult with legal and tax advisors.

It is the property owners' responsibility to review the legal and financial implications of donating an easement on their land; ACT does not give legal or tax advice. ACT can provide the owners with a list of local advisors familiar with this process, but the landowner must pursue those advisors who can give the best advice for their personal situation.

4) The property owners provide title information to Alachua Conservation Trust.

ACT will need title information to identify the owners of the property and the legal description of the land to be included in the conservation easement. It also identifies any liens or

mortgages that may exist on the property. The property owners will provide all the necessary ownership information to ACT, including a title search by a title or abstract company of their choice, if necessary.

5) The property owners obtain a mortgage subordination.

If the property is subject to a preexisting mortgage, the property owners are responsible for receiving subordination from the lender in order for ACT to accept the easement. ACT is not able to accept the donation of conservation easements without this agreement from the lender. Additionally, if the mortgage is not subordinated, the donation of the easement will not qualify for a federal income tax deduction. ACT will assist the property owners in explaining to the lender the benefit of the easement to the community at large and the charitable purpose of the donation.

6) The parties negotiate the restrictions and ACT drafts the easement.

Throughout the steps listed above, the property owners and ACT have developed a good idea of what type of activities will be restricted by the easement, and how the property owners have specified continued use of the land. At this time, a draft easement will be prepared by ACT. Legal advisors of the property owners and ACT will review the document to be sure the interests of both parties are served. As this is a legal document that will be attached to the deed of the property forever, careful discussion and scrutiny is critical to ensure the satisfaction of both parties with the long-term outcome of the conservation easement.

7) The property owners obtain a qualified appraisal.

As most property owners seek to obtain a federal income tax deduction as a result of their donation to ACT, an accurate appraisal is essential to understanding what the conservation easement is worth as a donation to ACT. Without a qualified appraisal, there can be no income tax deduction. Obtaining the appraisal of the property is solely the responsibility of the property owners, but ACT can provide the owners with a list of local appraisers. The final appraisal will be based on the restrictions placed on the property in the conservation easement document. However, the property owners may wish to consult informally with a qualified appraiser early in this process to get a general understanding of the value of the restrictions under discussion. For more information, please see the ACT handout “Why Do I Need an Appraisal?”

8) ACT compiles a baseline documentation report of the property.

In order that conservation easement donations may be considered a charitable tax donation by the property owners, federal tax regulations require a record of the condition of the property at the time of the donation. This is the baseline documentation report. It will include photographs, surveys, and other important information to represent the property fully. ACT representatives complete this study and record of

the property during site visits with the property owners. This baseline documentation will be used by ACT to fulfill its stewardship responsibilities to ensure that the wishes of the property owners are maintained in the future.

9) Formal acceptance of the conservation easement by the Alachua Conservation Trust Board of Directors.

The Board of Directors meets monthly to review activities of ACT and to approve acceptance of conservation easements.

10) The parties sign and record the easement.

When all the parties have agreed to all the terms and the wording of the easement, it is time for both parties to sign the document. The owners will sign the document, as will the authorized representative for ACT. The conservation easement is then recorded at the county courthouse and becomes a part of the deed to the land. This conservation easement is in perpetuity and will be part of every sale or transfer of this property from this day forward.

11) Stewardship of the conservation easement.

Alachua Conservation Trust is responsible for monitoring the specifics of the conservation easement from now on. This usually means an annual visit by an ACT representative to review the land with the property owners. A more complex conservation easement may require more frequent monitoring. Also, at each sale of the property, an ACT representative will contact the new property owner to review the stewardship responsibilities as set forth in the conservation easement.

12) Stewardship endowment.

In order to fund the annual monitoring and perpetual enforcement of the new conservation easement, the property owners are asked to establish a stewardship endowment. The income from the endowment will enable ACT to protect the land as specified in the conservation easement. In addition to staff time and other annual costs, ACT must be prepared to defend an easement against any legal challenges that may arise. As each easement is different, the ACT Board of Directors will specify the amount of the stewardship endowment for each of the conservation easements undertaken by ACT.

The mission of Alachua Conservation Trust is to protect the natural, historic, recreational, and scenic resources in and around Alachua County, Florida. ACT protects land through purchase, donation, conservation easement, and bargain sale.

