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## Property Law: The Uniform Conservation Easements Act: An Attorney's Guide for the Oklahoma Landowner

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# Property Law: The Uniform Conservation Easements Act: An Attorney's Guide for the Oklahoma Landowner

## I. Introduction

Some private landowners argue that "they've lost their property rights . . . to a federal government" that listens only "to environmentalists and ignores the wishes of private citizens."<sup>1</sup> The government answers claiming that it is "conservation needs — not the environmental lobby — that makes restrictions necessary."<sup>2</sup> Somewhere in the middle are the developers pursuing economic and social goals by negotiating between the two sides' interests hoping to fulfill their own.<sup>3</sup>

In the shadow of urban development, high property taxes, and the doctrine of eminent domain, many landowners are forced to sell their property.<sup>4</sup> The likely buyers are either developers paying premium prices or governmental agencies claiming the necessity of environmental protection. Even if landowners can maintain ownership of the property, their heirs may sell because of the substantial estate taxes upon inheritance.<sup>5</sup> While many landowners struggle to maintain their land, others argue for more governmentally protected land. Such movements are driven by estimates that over "3 million acres of open space each year in the United States" are lost to development.<sup>6</sup> Landowners, the government, and other citizens are concerned over the loss of undeveloped land and the overall effects of that loss on the environment. However, the government's asserted policy to protect the environment often conflicts with the rights of private landowners and private developers.<sup>7</sup> As illustrated by the introductory quotes, each side passionately argues

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1. *Who Owns America? Many Property Owners Feel Loss of Control* (Fox News television broadcast, July 21, 2000) [hereinafter *Who Owns America?*] (transcript on file with Oklahoma Law Review).

2. *Id.*

3. See James Boyd et al., *The Law and Economics of Habitat Conservation: Lessons from an Analysis of Easement Acquisitions*, 19 STAN. ENVTL. L.J. 209, 211 (2000) (discussing the conflict between private landowners, private developers, and environmental agencies).

4. See Katherine S. Anderson & Marybeth K. Jones, *Conservation Easements: An Essential Tool in the Practitioner's Estate Planning Toolbox*, 35 LAND & WATER L. REV. 183, 183 (2000); see also John L. Hollingshead, *Conservation Easements: A Flexible Tool for Land Preservation*, 3 ENVTL. LAW. 319, 321 (1997) ("Development of land, unlike consumption of renewable resources, is generally irreversible.").

5. See C. Timothy Lindstrom, *The Tax Benefits of Conservation Easements*, 79 MICH. B.J. 690, 690 (2000) (discussing the loss of "America's best farmland" because of high estate taxes based on the developmental value of land).

6. See Brenda Biondo, *Stand by Your Land*, NATURE CONSERVANCY, Sept.-Oct. 2000, at 27, 28.

7. See Federico Cheever, *Public Good and Private Magic in the Law of Land Trusts and Conservation Easements: A Happy Present and a Troubled Future*, 73 DENV. U. L. REV. 1077, 1078 (1996) (noting private landowners' distrust of government agencies and that conservation easements successfully balance private and public interests); see also *Who Owns America?*, *supra* note 1 (discussing

in favor of its cause. These legitimate conflicting concerns have generated new legislation that attempts to balance private property rights with environmental concerns.<sup>8</sup>

The Uniform Conservation Easement Act of 1981 (UCEA)<sup>9</sup> is a model code that a majority of the states, including Oklahoma in 1999,<sup>10</sup> adopted in some format to address these problems. The UCEA provides a uniform procedure for conveying conservation easements. A conservation easement is created when a private landowner maintains ownership of the land, but voluntarily conveys a nonpossessory interest in the land to an organization to help preserve the land's conservational uses.<sup>11</sup> The UCEA also works in conjunction with the Internal Revenue Code (IRC) to provide substantial tax benefits to landowners who convey a conservation easement to a qualifying organization.<sup>12</sup> Usually, landowners either sell a conservation easement at market value, sell "at a fraction of the property's value," or donate the easement to a land trust or charitable organization to achieve these tax benefits.<sup>13</sup>

Oklahoma enacted the UCEA hoping to assist private landowners in maintaining ownership of their property while protecting the public's interest in preserving the value of Oklahoma's open-space land.<sup>14</sup> Under the model code and Oklahoma statutes, the landowner determines which conservational uses to protect.<sup>15</sup> Using a conservation easement, a landowner can designate protection of the "natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property."<sup>16</sup>

Although the UCEA eliminates most of the problems that occur with easements created under common law,<sup>17</sup> the UCEA presents new problems and issues. Attorneys must carefully analyze both the landowner's short- and long-term goals to determine whether a conservation easement works for a client's situation. Most critically, granting a conservation easement imposes legally enforceable limitations

the conflict between private landowners and governmental agencies acquiring and secluding land from private citizens in the name of conservation).

8. See Boyd et al., *supra* note 3, at 211-12 (discussing the tension between private landowners, developers, and environmental causes and how conservation easements are a useful tool in balancing these interests).

9. UNIF. CONSERVATION EASEMENT ACT §§ 1-6, 12 U.L.A. 163 (1981).

10. 60 OKLA. STAT. §§ 49.1-49.8 (2001). See generally RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 1.6 statutory note at 39 (2000) (noting that Oklahoma, North Dakota, and Wyoming were the last states to adopt a statute authorizing conservation easements).

11. See UNIF. CONSERVATION EASEMENT ACT § 1, 12 U.L.A. 170 (1981).

12. I.R.C. § 170(h) (Supp. 2001).

13. Miriam S. Wolok, *The Conservation Easement: A New Way to Save the Family Farm*, OKLA. B. ASS'N REAL PROP. LAW., Spring-Summer 1999, at 3-4.

14. *Id.* at 3.

15. 60 OKLA. STAT. § 49.2 (2001).

16. *Id.*

17. See discussion *infra* Part II.

and affirmative obligations on the landowner and easement holder.<sup>18</sup> These limitations and obligations can potentially run with the land into perpetuity.<sup>19</sup>

This note examines whether the UCEA achieves the proper balance between private property rights and environmental concerns or creates new difficulties for landowners in the long run. The note also emphasizes that the greatest benefit of a conservation easement is realized by landowners who face losing their land because of financial difficulty. The purpose of this note is to assist attorneys in advising landowner clients in the decision-making process, as well as in designing a conservation easement that achieves the landowner's personal long-term goals. Part II highlights the problems with creating a conservation easement at common law and how the UCEA addresses these problems. Part III analyzes and compares the UCEA and the version of the law adopted in Oklahoma. Part IV raises issues that every landowner should address before granting a conservation easement. This section also addresses the tax benefits that can accrue from a conservation easement — that tax benefits can make a substantial difference to landowners and their heirs. If a landowner determines that a conservation easement would accomplish her long-term goals for the land, Part V discusses the importance of selecting the appropriate holder of the easement and notes the issues an attorney should address in the deed of conservation.

## *II. The Uniform Conservation Easement Act: A Solution to Conservation Easements at Common Law*

### *A. Conservation Easements at Common Law*

At common law, a traditional easement is either appurtenant or in gross to the land.<sup>20</sup> An easement appurtenant to the land is created when a landowner burdens her land with an easement for the benefit of the easement holder's adjoining, or dominant piece of property.<sup>21</sup> Usually, the holder of the easement benefits from the use of the burdened property.<sup>22</sup> By contrast, an easement in gross benefits a specific individual or organization regardless of the easement holder's ownership of adjoining land or use of the burdened estate.<sup>23</sup> A negative easement in gross is created when the holder of the easement has a legal right to prohibit the owner of the burdened land from certain activities.<sup>24</sup> Many courts find the limitation on private land rights for the benefit of an individual instead of an adjoining piece of land to be insufficient justification for restricting future landowners in the use of

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18. See 60 OKLA. STAT. § 49.5 (2001); see also Teresa Meinders Burkett & James L. Sneed, *Conservation Easements — New Opportunities for "Doing Well by Doing Good,"* 71 OKLA. B.J. 1069, 1071 (2000).

19. See RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 4.3 cmt. d (2000).

20. See *id.* § 1.1 cmt. b; JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, *LAND USE PLANNING AND CONTROL LAW* 655 (1998).

21. See JUERGENSMEYER & ROBERTS, *supra* note 20, at 655.

22. See JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 789 (4th ed. 1998).

23. See JUERGENSMEYER & ROBERTS, *supra* note 20, at 655.

24. See DUKEMINIER & KRIER, *supra* note 22, at 854.

their private land.<sup>25</sup> For the above reason, negative easements in gross are usually unassignable to parties not involved in the original agreement.<sup>26</sup>

When creating a conservation easement, the "landowner restricts his rights to develop his own land in ways that would be incompatible with" the interest protected in the agreement with the conservation organization.<sup>27</sup> In other words, conservation easements restrict landowners for the benefit of a conservation organization and not for the holder's land.<sup>28</sup> At common law, if an organization obtains such an agreement, the law classifies the easement as a negative easement in gross, which is unassignable.<sup>29</sup> Therefore, if an easement holder transfers the easement to another organization, the easement dissolves and becomes unenforceable, thereby defeating long-term conservational purposes. This can cause problems if the organization holding the easement becomes unable to monitor or care for the land because of financial problems.<sup>30</sup>

Arguments that conservation easements are actually real covenants or equitable servitudes under the common law encounter the same problem of non-transferability.<sup>31</sup> Both doctrines require that the restriction touch and concern the land before a court can enforce the restriction against a party not involved in the original agreement.<sup>32</sup> The "touch and concern" factor requires that there be an adjoining piece of property that receives the benefit of the restricted land.<sup>33</sup> Whereas, a conservation easement fails to satisfy the "touch and concern" factor because it restricts the use of property for the benefit of an individual or or-

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25. See also *id.* at 830, 854-57.

26. See *id.* at 830-31.

27. See JUERGENSMEYER & ROBERTS, *supra* note 20, at 657.

28. See *id.*

29. See *id.* at 674-75. Before enacting the UCEA, Oklahoma required a "dominant and a servient estate" before enforcing a conservation easement. See Wolok, *supra* note 13, at 3, 8. However, most organizations lack the funds to acquire adjoining property, or such land is unavailable. *Id.*

30. See Boyd et al., *supra* note 3, at 215; Cheever, *supra* note 7, at 1100 (recognizing the possibility that land trusts could face financial difficulty in the long run).

31. See JUERGENSMEYER & ROBERTS, *supra* note 20, at 665 (discussing the difficulty in distinguishing between negative easements, real covenants, and equitable servitudes when looking at the language of an agreement, but noting that the main concern with conservation agreements is whether the agreement is in gross). Real covenants and equitable servitudes are covenants or promises that restrict the use of land. *Id.* at 658. These restrictions are usually put in a deed of conveyance. *Id.*

32. See *id.* at 661-62. Real covenants and equitable servitudes both require that the agreement touch and concern the land. Courts seem to use the same analysis for both doctrines. *Id.* at 664. However, real covenants require privity of estate, which requires a relationship between the "original contracting parties" and the successor to the burdened property. *Id.* at 663. If this requirement is not satisfied, the covenant is "only enforceable by or against the original parties." *Id.* at 660. Equitable servitudes do not require privity of estate, but the touch and concern requirement accomplishes the same result. *Id.* at 663-64.

33. See *id.* at 662. The authors state:

[T]he touch and concern requirement is twofold: the promise must not only be related to the land of the promisee; it also must relate to the land of the promisor. The traditional rule is that if no dominant estate exists, if, in other words the benefit is in gross, the burden will not run.

*Id.*

ganization and not for the benefit of an adjoining piece of property.<sup>34</sup>

The common law disfavors restraints on alienability and usually only recognizes specific categories of negative easements.<sup>35</sup> For example, agreements addressing "light, air, support, or the flow of artificial streams" would satisfy the common law.<sup>36</sup> The limited list of recognized negative easements does not give a landowner or the easement holder many options.

With the common law's limitations on conservation easements, the UCEA is a necessary statutory provision.<sup>37</sup>

### *B. The UCEA Addresses the Common Law Problems*

The UCEA and Oklahoma's adopted version eliminate the problems with transferring a conservation easement at common law by providing that

[a] conservation easement is valid even though: it is not appurtenant to an interest in real property; it can be or has been assigned to another holder; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder; the benefit does not touch or concern real property; or there is no privity of estate or of contract.<sup>38</sup>

The prefatory note to the UCEA points out that the act "maximizes the freedom of the creators"<sup>39</sup> by eliminating common law barriers. Because of the lack of common law barriers, the parties can negotiate freely in conforming the conservation easement to their intent.

Although the UCEA addresses the transferability problems found in the common law, its drafters intentionally left other issues open for adopting states to determine.<sup>40</sup> First, while both the UCEA and Oklahoma's version require the recording of the easement,<sup>41</sup> the "formalities and effects of recordation" are decided by each state's own laws.<sup>42</sup> In Oklahoma, conservation easements are recorded under the

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34. *See id.* at 657.

35. *See id.* (arguing that the public interest in preservation should outweigh the common law's resistance to restraint on alienability).

36. *See Cheever, supra* note 7, at 1081 (noting that negative easements in gross, such as conservation easements, are incompatible with common law tradition).

37. *See DUKEMINIER & KRIER, supra* note 22, at 856.

38. *See* 60 OKLA. STAT. § 49.5 (2001); UNIF. CONSERVATION EASEMENT ACT § 4, 12 U.L.A. 179 (1981). *See generally* UNIF. CONSERVATION EASEMENT ACT § 4 cmt., 12 U.L.A. 179-80 (1981) (discussing the effect of section 4 on the common law).

39. *See* UNIF. CONSERVATION EASEMENT ACT prefatory note, 12 U.L.A. 164 (1981).

40. *See id.* at 166.

41. *See* 60 OKLA. STAT. § 49.3B (2001); UNIF. CONSERVATION EASEMENT ACT § 2(b), 12 U.L.A. 173 (1981).

42. *See* UNIF. CONSERVATION EASEMENT ACT prefatory note, 12 U.L.A. 166 (1981); *see also* Burkett & Sneed, *supra* note 18, at 1072 (noting that the Marketable Record Title Act guides the process for recording easements in Oklahoma).

Marketable Record Title Act.<sup>43</sup> Second, each state's laws guide how the statute affects state and local property taxes.<sup>44</sup> However, most Oklahoma landowners should conform their easement to the IRC's requirements to obtain substantial tax reductions for federal income and estate taxes.<sup>45</sup> Third, each state determines how to handle any claims brought to enforce, modify, or terminate the conservation easements.<sup>46</sup>

### *III. An Analysis of the Similarities and Distinctions Between Oklahoma's Version of the UCEA and the Model UCEA*

Oklahoma's version of the UCEA is almost identical to the model UCEA; however, an appreciation of changes in the statute's language and of the possible ramifications of these changes are critical when drafting a conservation easement in Oklahoma.

#### *A. Oklahoma: Landowners Enjoy Broad Discretion When Conveying a Conservation Easement*

Conservation easements are completely voluntary, and the Oklahoma landowner enjoys great latitude in determining the specific conservational restrictions. Title 60, section 49.2 of the Oklahoma act establishes flexibility in the types of conservation easements that a landowner can create.<sup>47</sup> The statute lists broad categories such as easements protecting scenic views, agricultural land, or cultural and historical attributes of property.<sup>48</sup> Oklahoma emphasizes the flexibility of the statute by adding that a conservation easement is "not limited to" the statute's listed options.<sup>49</sup> This flexibility can be a danger because a landowner who grants a conservation easement relinquishes certain rights in the name of conservation, usually in perpetuity.<sup>50</sup> Therefore, careful drafting is essential to protect against future misinterpretation of the agreement.

The UCEA and Oklahoma recognize that conservation easements "may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise

43. Marketable Record Title Act, 16 OKLA. STAT. §§ 71-85 (2001).

44. See UNIF. CONSERVATION EASEMENT ACT prefatory note, 12 U.L.A. 166 (1981).

45. Wolok, *supra* note 13, at 8 (noting that "Oklahoma landowners considering" granting a conservation easement should "choose the easement holder carefully to ensure that the easement qualifies for a federal tax deduction").

46. See UNIF. CONSERVATION EASEMENT ACT prefatory note, 12 U.L.A. 166 (1981).

47. 60 OKLA. STAT. § 49.2 (2001).

48. See *id.*; see also Burkett & Sneed, *supra* note 18, at 1070 (stating that the easement can protect "historic structures such as battlefields;" agricultural areas such as farming and ranching; and natural resources such as water sources).

49. 60 OKLA. STAT. § 49.2 (2001).

50. The Nature Conservancy published a brochure discussing conservation easements. See generally THE NATURE CONSERVANCY, A LANDOWNER'S GUIDE TO CONSERVATION OPTIONS (1999) [hereinafter A LANDOWNER'S GUIDE]. The brochure also states that the landowner is only restricted by what is agreed upon and can use the land "in any way consistent with the restrictions." *Id.* at 8. This means that a "landowner can sell the land, live on it or leave it by will." *Id.* However, the landowner must pay all taxes on the property and "ensure that the restrictions are not violated." *Id.*

altered or affected *in the same manner as other easements*."<sup>51</sup> The comments to the uniform act state that this language confirms that a state's common law addressing traditional easements can affect a conservation easement.<sup>52</sup> For example, the law recognizes a variety of traditional ways to terminate a conservation easement such as abandonment, adverse possession, or purchase of the burdened property by the easement holder.<sup>53</sup> According to the UCEA, these traditional methods of termination could be applied to conservation easements. However, Oklahoma's section 49.5 expressly states that a conservation easement is valid even though it does not resemble traditional easements or other servitudes.<sup>54</sup> Therefore, the Oklahoma act limits any application of case law or statutes addressing traditional easements in cases involving conservation easements.<sup>55</sup> Oklahoma has even amended the state's statute defining easements to include "[t]he right to impose limitations or affirmative obligations relating to conservation pursuant to the Uniform Conservation Easement Act."<sup>56</sup> This addition to the statute shows legislative intent for the Oklahoma conservation act to control conservation easements.

Oklahoma also adds an additional phrase not found in the UCEA: "a conservation easement may be created, [and] conveyed . . . in the same manner as other easements, provided however, nothing herein shall authorize any entity or individual to obtain a conservation easement by condemnation."<sup>57</sup> This statement reemphasizes that conservation easements are purely a voluntary act of a landowner and that the government cannot require a landowner to donate or sell a conservation easement to the government.<sup>58</sup> However, notwithstanding this additional protection, federal agencies can clearly claim the underlying land from Oklahoma landowners by using the doctrine of eminent domain.<sup>59</sup>

Under the UCEA, any prior real property interests created in a tract of land are not hindered by the subsequent granting of a conservation easement unless the owner of the interest consents to changes.<sup>60</sup> Therefore, easement property is "subjected to any existing liens, encumbrances and other property rights," which can include mineral rights.<sup>61</sup> Oklahoma added section 49.8 to this part of the act. This section states that property rights such as "pipeline for transmission, gathering, or transportation of hydrocarbons" can be created either voluntarily or by eminent domain, and the holder of a conservation easement "must subordinate" to these property rights.<sup>62</sup> Thus, city pipelines would override any limitations placed on

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51. 60 OKLA. STAT. § 49.3(A) (2001) (emphasis added).

52. See UNIF. CONSERVATION EASEMENT ACT § 2 cmt., 12 U.L.A. 174 (1981).

53. See Hollingshead, *supra* note 4, at 328-29.

54. 60 OKLA. STAT. § 49.5 (2001).

55. Wolok, *supra* note 13, at 8 (noting that the amendment to title 60, section 49 of the Oklahoma Statutes "eliminates any guesswork by judges in categorizing a conservation easement for interpretation and enforcement purposes").

56. 60 OKLA. STAT. § 49(18) (2001).

57. *Id.* § 49.3(A).

58. See Burkett & Sneed, *supra* note 18, at 1072.

59. See discussion *infra* Part IV.C and accompanying notes 103-08.

60. 60 OKLA. STAT. § 49.3(D) (2001).

61. UNIF. CONSERVATION EASEMENT ACT § 2 cmt., 12 U.L.A. 174 (1981).

62. 60 OKLA. STAT. § 49.8 (2001); see also Wolok, *supra* note 13, at 9 (discussing mineral interests



these public uses by a landowner. However, title 60, section 49.8 is limited to its specific language. As a result, landowners should note that conveying any other type of easement "which is incompatible with the conservation easement" would violate the agreement.<sup>63</sup> Such violation could occur when a landowner grants an easement to cut timber but the conservation easement expressly conserves the land as a forest. As a further example, if a landowner grants drilling rights on property with a conservation easement that protects the scenic view, a holder might challenge the grant, claiming that drilling affects these interests.

### *B. Oklahoma Limits Legal Challenges to Enforce Easements*

When considering whether or not to grant a conservation easement, a landowner must look at the long-term legal challenges that a party may bring to either terminate or enforce the easement. The Oklahoma act provides that "[a]n action affecting a conservation easement may be brought by: [a]n owner of an interest in the real property burdened by the easement; [a] holder of the easement; or [a] person authorized by other law."<sup>64</sup> Therefore, a landowner subject to a conservation easement may challenge an easement holder either for termination of the easement or to enforce the holder's responsibilities.<sup>65</sup> Also, an easement holder may sue either to enjoin the landowner from conducting activities the holder feels violate the easement or to enforce the landowner's "affirmative obligations."<sup>66</sup> Oklahoma law also authorizes certain individuals, such as the Oklahoma Attorney General, to enforce conservation easements by giving them "supervisory power over [the] charitable organizations or public agencies" that are easement holders.<sup>67</sup>

The Oklahoma legislature rejected a provision allowing third-party standing.<sup>68</sup> Such a provision would allow entities that are not parties to the easement to bring suit to enforce the terms of the agreement.<sup>69</sup> Therefore, if the holder of a conservation easement is "dissolved or [is] disqualified," another conservation entity or federal agency cannot bring suit to enforce the easement in Oklahoma.<sup>70</sup> Some scholars and states support third-party standing as a way to assist an insolvent land trust that cannot defend or enforce a conservation easement through litigation.<sup>71</sup> This argument raises an interesting question of whether landowners will start to view the "land trust movement as a disguised public land grab" because of the ability of the government and agencies to take the place of land trusts in suits.<sup>72</sup>

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and that holders of a conservation easement must yield to prior or subsequently acquired property rights).

63. See Burkett & Sneed, *supra* note 18, at 1072.

64. 60 OKLA. STAT. § 49.4(A) (2001).

65. See UNIF. CONSERVATION EASEMENT ACT § 3 cmt., 12 U.L.A. 178 (1981).

66. See *id.*

67. Burkett & Sneed, *supra* note 18, at 1073; see also UNIF. CONSERVATION EASEMENT ACT § 3 cmt., 12 U.L.A. 178 (1981).

68. Compare 60 OKLA. STAT. § 49.4(A) (2001), with UNIF. CONSERVATION EASEMENT ACT § 3(a)(3), 12 U.L.A. 177 (1981).

69. Wolok, *supra* note 13, at 9.

70. See *id.*

71. Cheever, *supra* note 7, at 1101-02.

72. *Id.* at 1102.

Oklahoma seems to answer this question affirmatively. As a result, Oklahoma limits the possible litigants who may enforce an easement. This limitation reduces the likelihood that a landowner will be sued by or defend against a party not involved in the creation of the conservation easement.

#### *IV. Is a Conservation Easement the Right Choice for You and Your Family?*

Why create a conservation easement? Most landowners, when considering a conservation easement, focus more on personal motivations, than on the public interests in preserving the open land. Some owners wish to preserve land for future family generations.<sup>73</sup> Many land-dependent owners, such as farmers and ranchers, sometimes have difficulty paying property taxes.<sup>74</sup> In addition, high estate taxes often force heirs of the property to sell.<sup>75</sup> Some landowners may want to restrict their land to gain support from an organization committed to helping the landowner maintain certain land uses.<sup>76</sup>

##### *A. Conservation Easements are Purely Voluntary and Landowners Design the Contract*

Conservation easements, in contrast to other types of land preservation tools, appeal to more landowners because most alternative environmental plans involve governmental agencies that provide direct public regulation and governmental control.<sup>77</sup> There is strong resistance by landowners in this country to these alternative environmental plans because of burdensome regulations by the governmental agencies.<sup>78</sup> These regulations can include seizing land or forbidding certain activities on property without significant input from landowners.<sup>79</sup> Conservation easements provide a more "site-specific environmental protection regime" because a landowner negotiates directly with a particular organization to determine common goals for that particular piece of land.<sup>80</sup> Conveying a conservation easement is viewed as a purely voluntary exercise of a landowner's right.<sup>81</sup> The landowner can have the first and last say as to whether a conservation easement will be granted against the property. This control by the landowner does, however, have limits. For example, the holder may not agree to all the terms the landowner requests because holders have their own goals in preserving land and protecting the

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73. See Henry E. Rodegerdts, *Land Trusts and Agricultural Conservation Easements*, 13 NAT. RESOURCES & ENV'T 336, 339 (1998) (discussing the results of a survey of farmers who conveyed a conservation easement in Connecticut and Massachusetts). Farmers were able to use the money saved from reduced taxes to "pay down existing obligations, invest for retirement, and improve their existing farm operations." *Id.*

74. See Anderson & Jones, *supra* note 4, at 183.

75. See Lindstrom, *supra* note 5, at 690.

76. See Rodegerdts, *supra* note 73, at 336.

77. See Cheever, *supra* note 7, at 1085.

78. See *id.* at 1086.

79. See *id.*

80. See *id.* at 1085.

81. See *id.* at 1086.

environment.<sup>82</sup> Moreover, in obtaining an easement, the holder can prohibit "environmentally harmful activities" that directly conflict with the interests in conservation, such as harm to wildlife or air quality.<sup>83</sup>

### *B. Modification and Liability of a Conservation Easement*

Landowners should consider the liability and challenges that can accompany a conservation easement.<sup>84</sup> If a landowner challenges the enforcement of a conservation easement, the Oklahoma statute states that nothing in the act shall "affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity."<sup>85</sup> Accordingly, under the *cy pres* doctrine, a court could "prescribe terms and conditions" to achieve results that closely match the original intent of the parties.<sup>86</sup> Likewise, a court could appoint a new holder, which could be a state or federal conservation agency, if the original organization is no longer able to monitor the land.<sup>87</sup> Significantly, the comments to the *Restatement (Third) of Property* stress that most courts look at conservation easements differently from traditional easements because of the stronger public policy in conservation and the public investment in funding charitable organizations.<sup>88</sup> Therefore, a landowner who wants a court to terminate the conservation easement on her property may find that the court is less sympathetic to her position.

A landowner should be aware that some states allow for termination or modification of conservation easements on the "changed condition doctrine."<sup>89</sup> Environmental factors, change of ownership, or other circumstances unpredictable at the creation of the easement can make the easement useless because the restrictions no longer "achieve their purpose due to changed conditions."<sup>90</sup> Usually, the changed condition doctrine provides for two types of remedies: (1) when restricted land can no longer accomplish the goals of the easement, the court can modify the agreement to enforce new conservational purposes<sup>91</sup> or (2) when modification of the agreement is impossible, the courts can terminate the easement.<sup>92</sup> However, today the remedy sought is often money damages instead of termination and modification because the primary purpose behind conservation easements is "to prevent undesired change" in restricted land.<sup>93</sup> Traditionally, the

82. *See id.*

83. *See id.*

84. *See Boyd et al., supra* note 3, at 223-24.

85. 60 OKLA. STAT. § 49.4(B) (2001).

86. *See UNIF. CONSERVATION EASEMENT ACT* § 3 cmt., 12 U.L.A. 178 (1981).

87. *See id.*

88. *See RESTATEMENT (THIRD) OF PROP.: SERVITUDES* § 7.11 cmt. a (2000).

89. *See id. See generally id.* § 7.11 cmt. a-d (discussing the changed condition and *cy pres* doctrines).

90. *See UNIF. CONSERVATION EASEMENT ACT* § 3 cmt., 12 U.L.A. 178 (1981).

91. *See id.*

92. *See id.*

93. *See RESTATEMENT (THIRD) OF PROP.: SERVITUDES* § 7.11 cmt. c (2000); *see also Cheever, supra* note 7, at 1096 (discussing arguments that landowners can make to terminate a conservation easement under the changed condition doctrine).

changed condition doctrine did not entitle a challenging party to recover damages.<sup>94</sup> Moreover, damages are favored in certain circumstances as a way to reimburse the injured party for expenses incurred due to the other party's failure to comply with the agreement.<sup>95</sup> Thus the threat of damages is also an incentive to each party to fulfill its responsibilities.<sup>96</sup> Also, damages are favored for reimbursement because funding for conservation organizations usually comes from private donations or taxpayers' dollars. Because of this public funding, courts want to "avoid[] loss of public investments made in such property" and to encourage the public's interest in conservation.<sup>97</sup>

Although landowners are not usually responsible for acts of God or other property damage caused by uncontrollable circumstances, a court might impose penalties on landowners if environmental contamination or other acts defeat the conservational purpose behind the easement.<sup>98</sup> When an easement is granted, an assessment of the property, known as "baseline property inventory," is set out in writing to identify the existing conditions of the land and environment.<sup>99</sup> If future degradation occurs on the property, a landowner can face penalties for those acts that "are inconsistent with conservation."<sup>100</sup> Issues not addressed in the contract are left to the courts to allocate fault and to apply principles of law.<sup>101</sup> Some states may apply a general "duty of care provision" to the contract, but this test is difficult to define because the broad language used provides little guidance to landowners.<sup>102</sup> A landowner must realize that conveying a conservation easement subjects her to new responsibilities and regulations that can result in liability, despite her full ownership of the property.

### *C. Conservation Easements Do Not Protect Against the Doctrine of Eminent Domain*

Even though a conservation easement cannot be obtained by the government through "condemnation,"<sup>103</sup> the eminent domain doctrine could still affect a landowner's ownership and use of the land if a governmental agency designates the land as protected.<sup>104</sup> Therefore, a landowner may wish to convey a conservation easement to a "long-standing trust organization" to limit the incentive for government involvement because federal agencies are often organized around environmental

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94. *See id.*

95. *See id.*

96. *See id.*

97. *See id.*

98. *See Boyd et al., supra note 3, at 224-25.*

99. *See id.* at 225.

100. *See id.*

101. *See id.*

102. *See id.* at 225-27.

103. 60 OKLA. STAT. § 49.3(A) (2001).

104. *See Hollingshead, supra note 4, at 321* (discussing that the government can purchase or take a fee simple title in the name of preservation). Hollingshead states that a drawback to governmental agencies obtaining fee simple title "to property results in an ongoing loss of public revenue" because the property is no longer subject to any taxation. *Id.* at 322.

statutes that allow for governmental action on property except land subject to an easement.<sup>105</sup> Ideally, conservation easements "are essentially self-implementing, generating no need for new governmental agencies" and regulatory laws because they are a contractual arrangement between two parties who negotiate the terms.<sup>106</sup> However, even conveying to a land trust does not always protect a landowner from federal agencies acquiring the land in the future. "Many land trusts engage in what they call 'preacquisition,'" which means that the land trusts purchase land from private landowners and then sell to the federal government for money.<sup>107</sup> Basically, this tactic makes money for the land trust without the long-term financial responsibility of monitoring the land,<sup>108</sup> and allows the government an interest in private land. If preacquisition occurs, a landowner could lose one of the main benefits of a conservation easement.

#### *D. Tax Qualifications and Benefits*

The tax benefits of a conservation easement offer tremendous incentive to landowners. Granting a conservation easement generates three tax benefits: (1) "an income tax deduction, (2) reduction of potential estate tax, and (3) local property tax reduction."<sup>109</sup> One should note that to satisfy the federal tax requirements, the holder of the easement must be a "qualified organization" under section 170(h) of the IRC.<sup>110</sup> This section requires that the organization must have the resources to enforce the conservation easement and a commitment to conservation.<sup>111</sup>

##### *1. Personal Property Tax and Other Considerations When Calculating Property Value*

Oklahoma does not recognize conservation easements for state property tax purposes.<sup>112</sup> However, a conservation easement reduces the value of the property, which in turn reduces the property tax.<sup>113</sup> State law and local assessors determine the value of property before and after a conservation easement.<sup>114</sup>

In appraising property, landowners who convey a conservation easement on only a portion of their land should realize that the easement could increase the value of any adjoining property by "provid[ing] aesthetic value to the neighboring parcel."<sup>115</sup> This

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105. Wolok, *supra* note 13, at 6.

106. See Hollingshead, *supra* note 4, at 322-23.

107. Cheever, *supra* note 7, at 1089.

108. *Id.*

109. Gary A. Zwick & James John Jurinski, *Using Conservation Easements for Real Estate*, 14 PRAC. TAX LAW. 43, 45 (2000).

110. I.R.C. § 170(h) (Supp. 2001).

111. *Id.*; Treas. Reg. § 1.170A-14(c) (as amended in 1999).

112. Wolok, *supra* note 13, at 8.

113. *Id.* at 7.

114. See A LANDOWNER'S GUIDE, *supra* note 50, at 14.

115. See Boyd et al., *supra* note 3, at 240-41 (discussing that the focus of the tax law is on property that is most threatened by development or property that benefits already protected land). Local "tax authorities are responsible for validating and policing evaluation claims" and for enforcing penalties against overvaluation. See *id.* at 246.

could mean that the value of the property as a whole rises substantially, although the value of the restricted property diminishes slightly. Landowners should also consider whether existing zoning restrictions already prohibit development on his land and have thereby already decreased the appraisal value of the land.<sup>116</sup>

### 2. Income Tax

For the purpose of income tax deductions, conveying a conservation easement classifies as a charitable gift. The amount of the deduction is determined by taking the difference of the before- and after-conveyance value of the land.<sup>117</sup> Section 170(b)(1)(B) of the IRC<sup>118</sup> limits the deduction "to [30%] of adjusted gross income in any year with a five-year carry forward."<sup>119</sup> The statutes allow income tax reductions to compensate for lost revenue, recognizing that conservation easements can severely limit the profitable uses of land.<sup>120</sup> Teresa Burkett and James Sneed provide a simple example of how the income tax deductions works: "Land is worth \$1,000,000. The donor places an easement on the land which prohibits any construction, any excavation or drilling, any cutting of timber or any subdivision. While appraisal may be difficult, the independent appraiser's report shows a value of \$700,000 and thus a charitable deduction of \$300,000."<sup>121</sup> If a landowner decides to donate rather than sell the conservation easement to a land trust organization, the landowner is entitled to a deduction based on the fair market value of the property.<sup>122</sup> Additionally, if a landowner sells an easement for an amount less than the fair market value, the landowner could possibly qualify under section 170 of the IRC as a "bargain sale" for a larger deduction.<sup>123</sup>

### 3. Estate Tax

Estate taxes can become a serious burden for heirs to property because "Congress subjects any development rights kept by the landowner to estate tax."<sup>124</sup> Each year, the value of land usually increases, but the increased value of the land may not be realized until the death of the original owner.<sup>125</sup> Death beneficiaries then face high estate taxes and often lack the funds to pay the taxes.<sup>126</sup> A landowner should start estate planning at the time land is acquired to receive present and future tax

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116. *See id.* at 241.

117. Treas. Reg. § 1.170A-14(h)(3)(ii) (as amended in 1999).

118. I.R.C. § 170(b)(1)(B) (Supp. 2001).

119. Burkett & Sneed, *supra* note 18, at 1073.

120. *See* Rodegerdts, *supra* note 73, at 336-37; *see also* Burkett & Sneed, *supra* note 18, at 1072 (noting that the transfer of development rights can result in the greatest tax benefits).

121. Burkett & Sneed, *supra* note 18, at 1073.

122. *See* Zwick & Jurinski, *supra* note 109, at 46 ("[F]air market value is the price at which property would change hands between a willing buyer and a willing seller.").

123. I.R.C. § 170 (Supp. 2001); *see also* Lindstrom, *supra* note 5, at 691. *See generally* A LANDOWNER'S GUIDE, *supra* note 50, at 21 (discussing bargain sales).

124. *See* Anderson & Jones, *supra* note 4, at 192.

125. *Id.* at 193.

126. *See id.*



tax exclusion "applies per estate not per property."<sup>140</sup> Therefore, each time the estate is included in a decedent's gross estate, the estate can claim an estate tax exclusion.<sup>141</sup> This means that each generation that inherits the land receives the estate tax benefit of the conservation easement.

Qualifying for the estate tax exclusion is more difficult than qualifying for the income tax deduction.<sup>142</sup> Therefore, a person able to claim an income tax deduction under section 170 may not qualify for the estate tax deduction because of the different requirements.<sup>143</sup> However, there is pending legislation that would eliminate the \$500,000 limitation, increase the availability of the estate tax to more landowners, and expand the twenty-five-mile rule to fifty miles.<sup>144</sup> The tax laws are extremely complicated, and an attorney must carefully analyze the IRC to determine exactly what deductions and exclusions are available to the landowner. Landowners and attorneys should consider that the tax benefits present today may be repealed tomorrow. Therefore, a landowner who grants a conservation easement to gain tax benefits may find that she gave private property rights away for nothing.

#### V. How To Set Up Conservation Easement to Accomplish Your Client's Long-Term Goals

Once a landowner decides that a conservation easement is right for her family, the next step is to establish a detailed assessment of the goals that the landowner wants to accomplish. An attorney should encourage the landowner to consider the wishes of the devisees of the property as well. If the landowner restricts the land to agricultural uses, then a devisee who does not wish to farm the land is in a complicated position.<sup>145</sup> Because of the possible restrictions on the devisees, the landowner might want to broaden the purpose of the land to other uses that still preserve the open-space value. For example, the landowner could include ranching, hunting, or recreational uses such as dirt biking on the property which some land trusts could consider damaging to the soil.<sup>146</sup>

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decedents dying during:	limitation is:
1998	\$100,000
1999	\$200,000
2000	\$300,000
2001	\$400,000
2002 or thereafter	\$500,000

I.R.C. § 2031(c)(3) (Supp. 2001); *see also* Zwick & Jurinski, *supra* note 109, at 46-47.

140. Zwick & Jurinski, *supra* note 109, at 47.

141. *See id.*

142. *See id.*

143. *See id.*

144. *See Tax Cuts for Conservation: A Good Idea, and Still Alive*, LAND TRUST ALLIANCE, Aug. 22, 1999 (discussing new developments in conservation easement legislation) (on file with the Oklahoma Law Review).

145. *See also* Cheever, *supra* note 7, at 1093 (giving an example of how future generations could react to conservation easements restricting the use of the land).

146. Some state statutes set out what rights cannot be prohibited by a conservation easement. *But see, e.g., id.* at 1082. Delaware specifically declares that "hunting, fishing, or other recreational activities"



James Boyd, in the *Stanford Environment Law Journal*, outlines what attorneys, landowners, and easement holders should consider when writing a contract by breaking down the components of a deed of conservation.<sup>147</sup> A landowner must determine which present and future property rights to extinguish and which to retain.<sup>148</sup> Usually, a deed of conservation will set out the main purpose of the conservation easement and list what activities are prohibited on the land.<sup>149</sup> To provide extra protection, landowners should include the rights retained, which can include a parcel of land upon which to build a home.<sup>150</sup> The landowner's retained rights cannot conflict with the conservational goals of the holder, and both parties must agree on the retained rights.<sup>151</sup>

Another part of the contract could include a statement of land management requirements, which describes some of the responsibilities for accomplishing the purpose of the conservation easement.<sup>152</sup> A drafter should also include a statement detailing methods of resolving disagreements in case of a breach of contract challenge.<sup>153</sup> Other provisions might list limitations on liability of the holder, disclaiming the landowner's responsibility for taxes on the property or repairing property damage caused by intentional or negligent acts.<sup>154</sup> Also, the drafter should include a statement of the length of time for which the easement will run with the land. The landowner and holder can agree to a limited amount of time;<sup>155</sup> however, if the landowner wants tax deductions, the conservation easement must be in perpetuity.

#### A. Choosing a Holder of a Conservation Easement

One should research extensively to find the proper organization to hold a conservation easement.<sup>156</sup> The chosen holder usually inspects the land at least annually and is the enforcer of the agreement even against future successors in the land.<sup>157</sup> Title 60, section 49.2(2) of the Oklahoma statutes and 12 U.L.A. section 1 of the UCEA, define a "holder" of a conservation easement as either "a governmental

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can not be prohibited in a conservation easement. *Id.*

147. See generally Boyd et al., *supra* note 3.

148. See generally, Boyd et al., *supra* note 3, at 221-33 (discussing the contents of a conservation easement contract or deed of conservation).

149. See *id.* at 222-23.

150. See *id.* at 223 (stating the "definition of acceptable land uses is commonly based on an understanding of current land uses" as long as those uses do not conflict with the purpose of the conservation easement).

151. See Burkett & Sneed, *supra* note 18, at 1071 (stating that a balancing of the landowner's interest in the "family's future use of the property" and "the holder's goals" for preservation occurs when negotiating a conservation easement).

152. See Boyd et al., *supra* note 3, at 222.

153. See *id.*

154. See *id.*

155. See *id.*; see also 60 OKLA. STAT. § 49.3(c) (2001).

156. See Boyd et al., *supra* note 3, at 222 (stressing the importance of researching different potential holders of the easement before entering into an agreement).

157. See *id.*

body empowered to hold an interest in real property under the laws of this state or the United States, or a charitable corporation, charitable association, or charitable trust" with the purpose of protecting the open-space value of the land.<sup>158</sup>

Qualifications to be a charitable organization in Oklahoma are broader than under the IRC. However, to receive the full benefits of granting a conservation easement, the landowner should ensure that the potential holder of the easement is a qualified organization under the IRC. Section 170 (h)(3) of the IRC<sup>159</sup> addresses the requirements for a qualified organization, which usually must be a "charitable conservation organization[] or governmental unit[], but not [a] private foundation[]." <sup>160</sup> Section 170(h)(4) also states that the holder must have a purpose and commitment to conservation.<sup>161</sup> To qualify under the IRC, it is not necessary for the organization to be an environmental group as long as the organization's purpose is conserving land or historical sites.<sup>162</sup>

Choosing the right organization to be the holder of a conservation easement is extremely important because a landowner is conveying the right to care for and monitor the land forever. A landowner probably would prefer that the easement holder be a local organization instead of a governmental entity,<sup>163</sup> but local or privately funded organizations often face financial difficulty.<sup>164</sup> Local land trusts, which at the time of the deed are financially stable, could later become insolvent.

The holder of the easement is the party responsible for the enforcement of the agreement, and if the holder is financially unstable, two problems can arise.<sup>165</sup> First, a landowner could sue to terminate the conservation easement, arguing that the holder is not assisting in the maintenance of the land. However, under this scenario the holder may lack the resources to litigate on its own behalf.<sup>166</sup> Several commentators argue that in these situations the courts should be allowed to terminate the easement under the changed condition doctrine.<sup>167</sup> This situation also raises the issue of allowing broad, third-party standing which allows outside organizations to take the place of an insolvent holder.<sup>168</sup> Second, the land trust might be forced to sell to another organization, such as a federal or state governmental agency, which is more financially stable.<sup>169</sup>

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158. 60 OKLA. STAT. § 49.2(2) (2001); UNIF. CONSERVATION EASEMENT ACT § 1(2), 12 U.L.A. 170 (1981).

159. I.R.C. § 170(h)(3) (Supp. 2001).

160. Burkett & Sneed, *supra* note 18, at 1073 (paraphrasing Karen Potter-Witter and Leighton Leighty listing the necessary requirements to classify under the Internal Revenue Code).

161. I.R.C. § 170(h)(4) (Supp. 2001); *see also* Wolok, *supra* note 13, at 8 (stating that to be a qualified organization, the organization "must be operated substantially for a conservation purpose").

162. *See* Burkett & Sneed, *supra* note 18, at 1071.

163. *See* Rodegerdts, *supra* note 73, at 337.

164. *See* Cheever, *supra* note 7, at 1100 (discussing the long-term problems that can occur when future generations inherit and conservation organizations are unable to enforce the easement).

165. *See id.*

166. *See id.*

167. *See id.* Professor Cheever also discusses the difficulty a court could have in determining which conservation easement to extinguish and which to enforce with modifications. *Id.*

168. *See supra* discussion notes 71-72 and accompanying text.

169. *See* Rodegerdts, *supra* note 73, at 337 (noting that federal and state governments receive

*B. Land Trusts — The Leading Advocates for Conservation Easements*

Land trust organizations are a significant part of the conservation easement movement. The Land Trust Alliance lists three land trusts operating in the Oklahoma area: (1) Norman Area Land Conservancy, (2) Ozark Regional Land Trust, and (3) the Nature Conservancy.<sup>170</sup>

According to the Land Trust Alliance's national estimates, "[m]ore than 4.7 million acres have been protected by local and regional trusts, which have protected 1.4 million acres by conservation easements alone . . . ."<sup>171</sup> Land trusts receive most of their funding through private donations and usually operate in designated regions.<sup>172</sup> In Colorado, where ranch land is threatened by development, local land trusts have protected more than 18,000 acres of ranch land.<sup>173</sup> Land trusts encourage the use of conservation easements because such easements require less financing and allow landowners to take a private and influential role in conservation. Land trusts acquiring full ownership of land is expensive and is disfavored by supporters of private land rights.<sup>174</sup> However, because conservation easements permanently tie private land to a public organization, land trusts acquiring conservation easements achieve the same result as would be achieved by actually purchasing the land.<sup>175</sup>

The Door County Land Trust and the Nature Conservancy provide examples of the creativity that can be used when granting an easement or purchasing a piece of land burdened with a conservation easement.<sup>176</sup> In an effort to "minimize habitat fragmentation," the Door County Trust and the Nature Conservancy purchase parcels of land bordering one another.<sup>177</sup> The conservancy purchases and combines the different parcels and then "donate[s] conservation easements on them to the land

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funding through taxes, bonds, lottery proceeds, and federal matching funds used to assist state and local agricultural programs).

170. See *Find a Land Trust*, LAND TRUST ALLIANCE, at <http://www.lta.org/findlandtrust/OK.htm> (last visited Apr. 13, 2002). See generally Wolok, *supra* note 13, at 6 (stating that the Nature Conservancy is the only Oklahoma land trust that is a qualified organization under the federal statutes). The Nature Conservancy holds a few conservation easements in Oklahoma, and landowners can request information concerning conservation easements from this group. See *id.* at 7-8. However, land trusts are not the only organizations obtaining conservation easements in Oklahoma. For example, the United States Fish and Wildlife Service holds a conservation easement on land "surrounding the Bat Caves National Wildlife Refuge." See *id.* at 7.

171. See *Newsroom: New Tax Law Brings New Incentives for Land Conservation*, LAND TRUST ALLIANCE, at [http://www.lta.org/newsroom/pr\\_0601.htm](http://www.lta.org/newsroom/pr_0601.htm) (June 29, 2001).

172. See Biondo, *supra* note 6, at 27-28 (stating that the majority of land trusts are locally based within communities and that 40% of the land trusts are run by volunteers). The article states that the Nature Conservancy has protected more than 10,000,000 acres. *Id.*

173. See *id.*

174. See Boyd et al., *supra* note 3, at 214. However, once a fee title is purchased, the monitoring and control costs should be low. *Id.* at 215. The article also states that organizations purchasing fee simple titles to property are not always able to maintain the original agricultural uses because the organizations are not experienced farmers or ranchers. *Id.* at 214.

175. Cheever, *supra* note 7, at 1078.

176. See Biondo, *supra* note 6, at 31.

177. See *id.*

trusts."<sup>178</sup> Afterwards, the property is sold to private landowners who agree to development restrictions.<sup>179</sup> However, such landowners should carefully examine the conservation easement because the parties who have created the deed are two land trust organizations concerned mostly with conservation. The original private owner and the potential buyer have had little input on the construction of the deed. Therefore, in such situations, it is essential that the limitations specified in the easement correspond with the landowner's short- and long-term goals for the property.

#### *VI. Conclusion*

Under the UCEA, conservation easements become a useful tool in balancing public and private interests in land, which in the past was a difficult task. Landowners make a voluntary decision based on their own needs to determine whether to grant a conservation easement. However, landowners must realize that although they maintain a fee simple title to property, the easement will entail new limitations, obligations, and liabilities. Predicting how future generations might react to conservation easements or how the courts will handle challenges in the long-term is a difficult task. However, even with such uncertainties, the substantial tax benefits of conservation easements for landowners and heirs can provide significant incentives.

Choosing the holder of the easement can make a difference in the effectiveness and ease of maintaining a conservation easement. A holder of an easement has the right to sell or transfer the easement unless limited in the agreement. Therefore, a landowner should be aware of the possibility that the chosen holder may convey the easement to another organization. Nationally recognized land trust organizations, like the Nature Conservancy, usually operate in designated areas and have the added benefit of a larger organization's support. Further, the larger land trust organizations usually qualify under the IRC so that a landowner can receive federal income tax benefits.

Conservation easements can be difficult to terminate or modify. Therefore, landowners should only enter into a conservation easement after carefully weighing present and future goals with the other options available. Also, because the easement will put restrictions on the private property rights of the owner, the burdens of this interference must be considered. Land burdened with a conservation easement attaches private land to public organizations, which results in the loss of individual autonomy for present and future generations.

*Erin McDaniel*

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178. *See id.*

179. *See id.*

