



PRESERVE CHATTANOOGA
FAÇADE
EASEMENTS

Protecting Chattanooga's Architectural Heritage





PRESERVE CHATTANOOGA

Preservation Easement Program

Preserve Chattanooga is passionate about protecting the architectural heritage of Chattanooga. Established in 1975 as a non-profit 501(c)(3) educational corporation, Preserve Chattanooga is chartered by the State of Tennessee, governed by a board of directors, and is the only preservation education and advocacy organization serving Chattanooga.

Across the United States, preservation easements have proven to be effective ways to ensure historic properties are protected from demolition, inappropriate alterations, or neglect. Our desire is to help ensure that the character and integrity of such structures remain beyond the current generation of ownership. Preservation easements are a powerful tool that allows properties to remain on municipal tax rolls, does not incur maintenance costs for the easement holding organization, and may provide tax advantages to historic property owners. Preserve Chattanooga holds several such easements on some of our city's most iconic buildings such as the Dome Building, the Customs House, the Tivoli Center, and the Joseph Warner House.

In 1981, the State of Tennessee passed legislation allowing for the creation of “conservation easements” to protect land and structures¹. Preserve Chattanooga operates a preservation easement program based on this legislation and aspires to follow best practices associated with easement programs.

Frequently Asked Questions

What is a preservation easement?

A preservation easement, also referred to as a “conservation easement” in Tennessee, is a legal agreement used to protect the architectural and/or landscape features of a historic property. The property owner (easement donor or “grantor”) and a qualified preservation organization such as Preserve Chattanooga (easement holder or “grantee”) sign a legal document, recorded with local land records, that gives the easement holder certain rights and responsibilities associated with perpetual protection. The easement does not prevent future sales, leases, or estate planning, and the owner remains responsible for maintenance and taxes. Preserve Chattanooga receives the preservation easement as a “donation”.

The Preserve Chattanooga mission is to protect architectural heritage which is why we use the term “preservation easement”. Generally, our easements protect exterior architectural features. Under special circumstances, a preservation easement may also consider interior features or designed landscape features. Large land holdings may be referred to another qualified easement holding organization that focuses specifically on land conservation. A preservation easement with Preserve Chattanooga will work to protect a property from demolition or exterior alterations/additions not in keeping with its historical architectural character. The easement may also be written to ensure proper maintenance, to prohibit subdivision of the land, or to include other provisions tailored to the donor’s needs or circumstances of the property.

¹ The State of Tennessee, Conservation Easement Act of 1981; TCA § 64-9-301

What makes Preserve Chattanooga qualified to hold preservation easements?

Preserve Chattanooga meets Tennessee state law requirements for holding a preservation easement by being a tax exempt 501(c)(3) organization with an organizational mission to preserve the historical, architectural, archaeological, or cultural aspects of real property. Preserve Chattanooga currently holds several preservation easements on properties within the City of Chattanooga. We have experienced, professional staff that is knowledgeable about historic properties as well as qualified legal counsel. Preserve Chattanooga benefits from accepting preservation easement donations by being able to control development of a historic property without purchasing it.

Why donate a preservation easement?

A preservation easement can be the most effective way to control the future of a historic property and preserve a family legacy. National Register designations do not prevent demolition or structural alterations. Local historic districts may have limited capacity to enforce the level of protection desired and may be politically unstable. A preservation easement places the power to protect a structure with the current owner in partnership with Preserve Chattanooga. It creates a legally enforceable agreement as part of the property deed that remains regardless of ownership changes. However, please note that even though a preservation easement is the most effective way to ensure protection it is not a 100% guarantee. It is possible, through a public process, for a community to use eminent domain to override an easement although this is exceptionally rare.

What does a preservation easement allow?

Preservation easements do not prevent the sale or lease of a historic property or hinder estate planning. Preserve Chattanooga's easements do not require a property owner to receive approval for completing basic maintenance of the property, such as painting or minor repairs. In most cases paint color is not restricted. Restrictions to certain spaces such as kitchens and bathrooms are not typical, therefore allowing a property owner to upgrade these spaces for modern living.

What properties are eligible for the Preserve Chattanooga Preservation Easement Program?

Typically, a structure must be at least 50 years old at the time of application and be either individually listed on the National Register of Historic Places or be a "contributing structure" to a National Register District. Preserve Chattanooga reserves the right to refuse acceptance of a preservation easement for any reason. Please note that a property must be 50 years old to qualify for certain income, estate and property tax deductions. Easements on properties less than 50 years old may be considered on a case-by-case basis.

What is the cost of creating a preservation easement?

There are no costs associated with initial consultations or for an initial visit to a property by Preserve Chattanooga staff to discuss a potential preservation easement. There is a negotiated cash donation amount that accompanies the easement donation if accepted. The cash donation assists with covering staff and legal costs associated with preparation of the easement.

When Preserve Chattanooga accepts an easement it also takes responsibility for the monitoring of the property in perpetuity, ensuring that the terms of the agreement are observed. Please keep in mind that our organization will incur a variety of expenses when creating a new preservation easement. Because of this,

Preserve Chattanooga includes a transfer fee provision in all easements. The transfer fee does not apply to inter-spousal transfers, transfers by gift, transfers between parents and children, transfers between grandparents and grandchildren, transfers between siblings, and contains special provisions for transfers between a corporation and any shareholders in the same corporation. The transfer fee is also used as a "trigger" to notify our organization when a property transaction may be taking place.

Preserve Chattanooga does not cover any costs associated with an owner's legal counsel, property surveys, or title search. The donor is responsible for paying all recording fees.

Are there financial benefits to donating a preservation easement?

Preservation easements donated to Preserve Chattanooga may qualify for income, estate and property tax deductions. The federal Tax Treatment Extension Act of 1980 codified authority for the donation of easements as tax-deductible gifts. If the donation meets the standards established in the Internal Revenue Code (IRC Sec. 170) and a value can be determined for the easement, the resulting deduction applies to federal income taxes. These allow a qualified donor to take a charitable contribution deduction for the appraised value of the legally binding preservation easement placed in perpetuity on an historic property. Donors wishing to seek a federal tax deduction for the donation of a preservation easement to protect a National Register of Historic Places-listed historic structure are advised to obtain professional advice on satisfying the appraisal requirements of the Internal Revenue Code. The donation of a preservation easement may also give rise to favorable property, estate, and other tax treatment. Each prospective donor should consult with qualified professional advisors to determine the tax and legal consequences of the donation of a preservation easement to Preserve Chattanooga.

Income tax deductions

To qualify for the federal income tax deduction, the easement must be granted to a not-for-profit organization with 501(c)(3) tax status. The preservation easement must be granted solely for conservation purposes and in perpetuity. The property must be a certified historic structure; defined as any building, structure or land area listed in the National Register of Historic Places.

To claim a deduction, the value of the easement must be determined by a qualified professional appraiser. The easement's value is customarily calculated as the difference between the fair market value of the property before and after easement donation. If the value of the donation exceeds the deductible limit for one year, the owner may carry it forward for up to five years. Property owners who wish to claim a tax deduction for an easement donation should retain the services of a tax accountant and/or a tax attorney and a real estate appraiser with experience in the examination of historic property.

Easement donation and investment tax credits

The donation of an easement may be used in combination with the 20% investment tax credit available for the substantial rehabilitation of certified historic structures used in a trade or business. (Residences, or other personal property, do not currently qualify for the 20% investment tax credit.) In such cases, the donor should be aware that preliminary certification, significance or mere eligibility to the National Register does not constitute "Certification" as defined by the Internal Revenue Code governing easements, and thus does not guarantee the donation as a charitable contribution.

Estate Tax Reduction

Donation of an easement to a qualified public charitable institution such as Preserve Chattanooga may also reduce federal estate taxes. If given during the owner's lifetime, the easement's value is not included when the value of the donor's estate is determined. As a result, the estate taxes will be lower.

Property Tax Reduction

Donation of an easement may also reduce property taxes. The amount of any tax reduction due to an easement depends on the property's location, use, and development potential. For example, the limitations created by an easement would be greater on a downtown commercial building than on a residence in an area where development pressures may not be as intense. Under Tennessee Law local tax assessors must recognize the devaluation of a property with an easement.

The Donation Process

Our determination regarding the acceptance of a preservation easement is made on an individual basis and must be approved by the Preserve Chattanooga board of directors. The following steps describe the typical process that we use and are provided for general reference only:

1. An initial consultation will occur to discuss the property and level of protection desired. The initial consultation may include a site visit to the property and a request for additional information. There is no fee for the initial consultation or site visit.
2. If the initial consultation is successful, the prospective donor will be asked to submit a Preservation Easement Program Application.
3. Preserve Chattanooga will prepare a draft preservation easement agreement in collaboration with the donor and his or her attorney.
4. The legal contract and accompanying donation is presented to Preserve Chattanooga's board of directors for approval and formal acceptance.
5. The grant of easement is recorded.

(Standard procedures may be modified on a case-by-case basis.)

Administration of the Preservation Easement Program

One of the advantages to donating a preservation easement to Preserve Chattanooga is that we maintain full-time, professional, local staff to negotiate and monitor our Preservation Easement Program. Administration of the Preservation Easement Program includes: (1) monitoring of easement properties, (2) approval of proposed projects as permissible within the restrictions of a specific easement, and (3) enforcement of easements.

Monitoring of Easement Properties

Each year, Preserve Chattanooga staff will inspect the property based on the preservation easement requirements. Because assessing the building's condition under varying weather conditions is preferable, the annual visit is undertaken at different times each year. If issues appear to exist, staff will contact the property owner to schedule a site visit at a mutually convenient time for further discussion. Monitoring reports and schedules are kept on file at the Preserve Chattanooga office.

Project Approval

In addition to routine maintenance, owners may occasionally need to conduct larger renovation projects that may affect protected features. Proposed projects should first be discussed with our staff to determine whether protected features will be affected and/or if Preserve Chattanooga's approval will be needed. If so, the property owner must submit a Request for Project Approval Form. Once received, the Preserve Chattanooga Easement Review Committee will review all proposals within thirty days. Work may begin once the property owner receives written approval for a project from Preserve Chattanooga.

Enforcement

Preserve Chattanooga considers a strong enforcement policy vital to maintaining the integrity of our program. We believe we have a responsibility to ensure the preservation of the properties we have promised to protect, and recognize the great trust that has been placed on our organization by easement donors.

Contact Information

For more information about Preserve Chattanooga and its preservation easement program, call (423) 265-2825, email our Executive Director at todd@preservechattanooga.com, or write to:

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