



National Trust *for*  
Historic Preservation

# Easements and Covenants as Preservation Tools

Preserving Historic Places: Indiana's Statewide Preservation Conference

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*Save the past. Enrich the future.*

# Presentation Outline

1. Legal Overview of Preservation Easements
2. Easement Stewardship
3. Indiana Landmarks Easement & Covenants Program



# **Legal Overview of Preservation Easements**



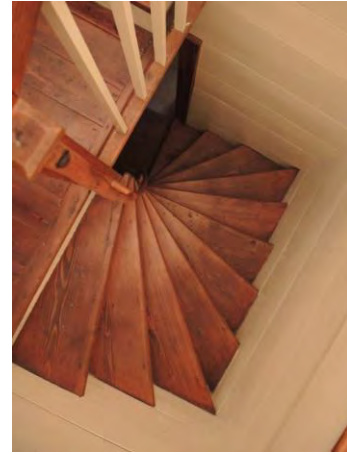
## What is Preservation Easement?

An agreement between a landowner and a nonprofit organization or government agency that limits the use of property for the purpose of protecting a property's preservation/historic and/or conservation value/resources.









# Easements can protect various conservation and preservation values

- Prohibit or regulate subdivision or further development of property
- Require agricultural uses that conform with sound agricultural practices



# Easements can protect various conservation and preservation values

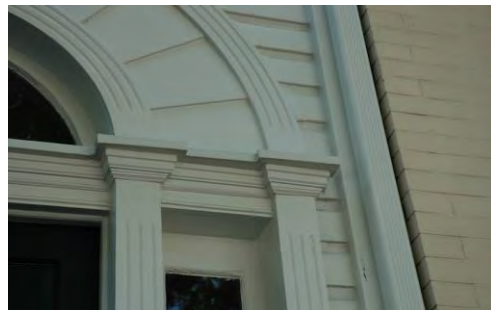
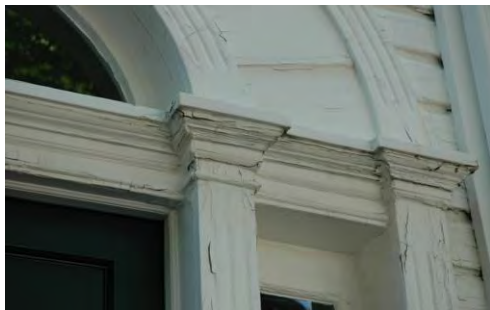
- Prohibit or regulate location, design, construction or replacement of buildings or structures
- Regulate changes or alterations to buildings or structures





# Common Preservation Covenants & Restrictions

- Covenant to Maintain
- Prohibited Activities
- Conditional Rights Requiring Approval
- Reserved Rights Not Requiring Approval



# Benefits

- Owner
  - Landowner has continued ownership and use of property
  - Landowner can sell property or pass it on to heirs
- Preservation Organization
  - Financial investment is small with large preservation value
    - Protection without purchasing the property
  - Perpetual (in most cases)

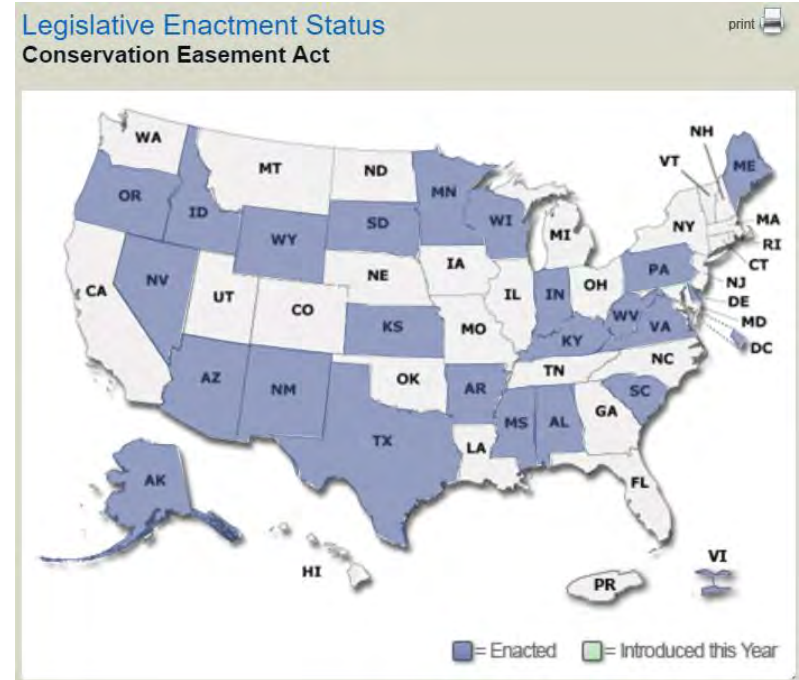
# Risks

- Monitoring and project review
- Enforcement/legal action



## State Enabling Laws

- Govern how preservation easements can be created and enforced
- Provide authority for private property owners to burden their properties with restrictions
- 1/2 states have adopted UCEA, 1/2 have unique statutes





# Indiana Enabling Law – I.C., Section 32-23-5

- **Conservation Easement** – “a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations with the purpose of...preserving the historical, architectural, archaeological, or cultural aspects of real property.”
- **Holder** – “a charitable corporation...[with] the purposes...[of] preserving the historical, architectural, archaeological, or cultural aspects of real property.”
- **Specific provisions** related to:
  - Creation, conveyance, and recording
  - Third-party enforcement rights after acceptance of the easement is recorded
  - Unlimited term unless otherwise specified
  - Taxation

# Acquisition of Preservation Easements

- Non-profit organization acquires property and sells subject to preservation easement or covenants
- Donated by property owner (tax motivated and non-tax motivated)
- Condition of grant (usually term or years; not in perpetuity)

# Tax Benefits of Easement Donations

## Qualified Conservation Contribution Sec. 170(h)

- Federal tax deduction may be available for the donation of a “qualified” preservation easement to a “qualified” easement-holding organization under Section 170(h) of I.R.C.
- A qualified conservation contribution means a contribution:
  - Of a qualified real property interest;
    - A perpetual restriction on the use which may be made of real property
  - To a qualified organization; and
    - Typically 501(c)(3) and meets requirements of Section 509(a)(2) or (3)
  - Exclusively for conservation purposes.
    - Preservation of a historically important land area or a certified historic structure



# Easements After Tax Reforms (2017 & 2006)

- No change to conservation easements in 2017.
- Preservation easements are still an effective tool to protect historic places.
- Tax incentives were strengthened.
- Congressional reforms should be welcomed: they should have little impact on most strong preservation easements, and will help to eliminate abuses.
- Easements that are structured to promote strong preservation interests should meet the new requirements easily.



# Comparison of Local Laws and Easements

## Local Laws

- Laws subject to change
- Demolition delay
- Demolition by neglect
- No regular inspections
- Review certificates of appropriateness

## Easements

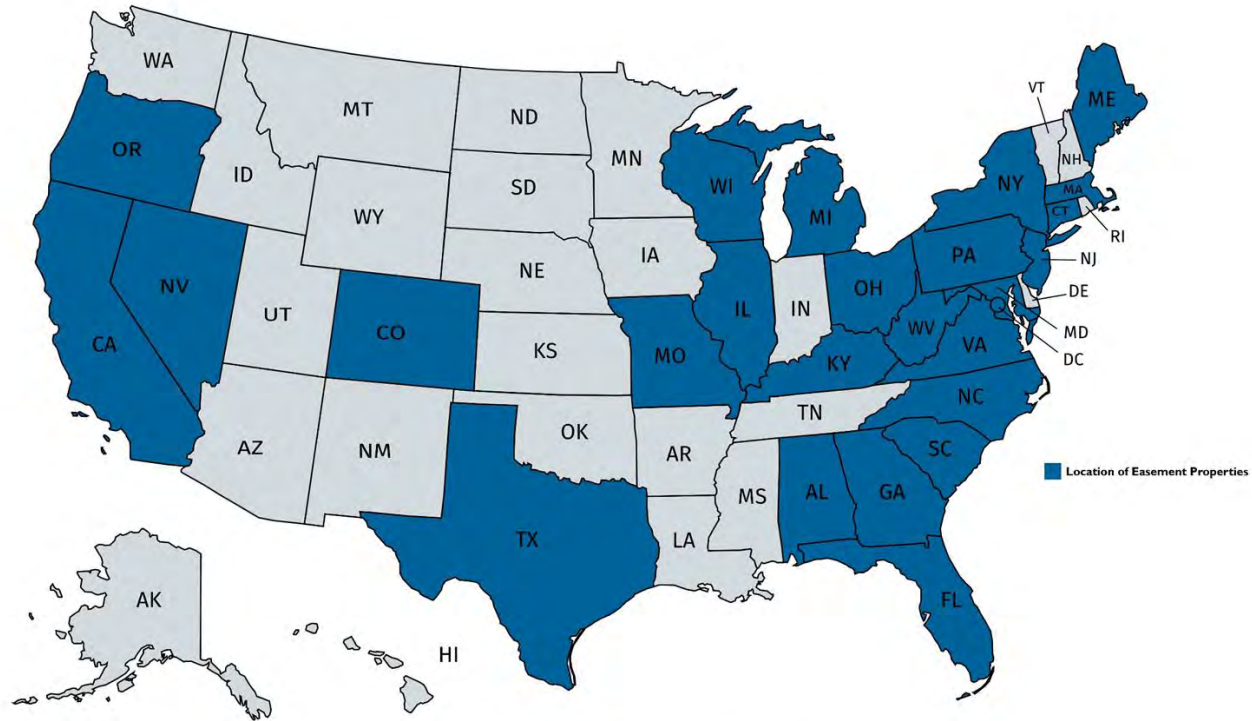
- Perpetual
- Demolition prohibited
- Maintenance obligations
- Regular inspections
- Review request for changes or alterations

# **Easement Stewardship**



# National Trust Easement Program





**National Trust Easement Program**



# Stewardship

For easement holder, stewardship entails the activities necessary to ensure that the terms of the easement are upheld.

- Developing easement terms that can be monitored/enforced
- Building good property owner relationships
- Monitoring regularly
- Keeping reliable records
- Reviewing/approving requests for approval
- Enforcement of easements



# Transactions

An essential part of good stewardship starts when an easement is being drafted.

- Individually evaluate each property to identify its preservation and conservation values.
- Ensure that the terms can be effectively monitored.
- Balancing the restrictions, but not overly limiting that would affect the future preservation and marketability of a property.





# Monitoring

Cyclical monitoring of every easement property ensures the easement's terms are being upheld.

- Visually inspecting and documenting those elements of the property that are regulated under the terms of the easement.
- Monitoring visit can serve to help build relationship with property owner, discuss upcoming plans for property or answer questions.



# Enforcement

If a property owner is violating the terms of the easement, the easement holding organization will seek to enforce the easement.

- Violations can range from deferred maintenance, to unapproved alterations, or unapproved uses.
- We try to work with the owner to remedy the violations voluntarily before pursuing legal action.
- Keys to preventing violations – good property owner relationships, regular easement inspections.





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## **Easements & Covenants Program**

# A Brief Program Summary:

- Program was launched in the 1970s with easement placed the Reitz Home, Evansville, in 1975. Covenant protections in the early 1970s placed on properties in Lockerbie Square, Indianapolis.
- Our portfolio includes both easement and covenant properties.
- Indiana Landmarks presently holds 135 easements and nearly 700 covenants.





# Easements – Basic Steps

- Easements typically sought on National Register-listed properties or those rated Outstanding or Notable in countywide survey.
- Consultation with the appropriate Indiana Landmarks' regional office is the first step.
- Tax deductible monetary contribution to Indiana Landmarks' Easement Monitoring Fund is encouraged.
- Final approval of easement by Board of Directors.

# Athenaeum, Indianapolis



# Covenants – A Few Takeaways

- Attached to deed on Indiana Landmarks'- owned properties or those for which loan assistance is provided.
- Typically requires that the buyer submit for approval a restoration plan and that work be completed within a prescribed timeframe.
- Covenants run with the land binding future owners to maintain the property in “first class condition” , require IL approval for exterior changes, and provide IL right of first purchase in the event of a sale.

# Cardinal Ritter Birthplace, New Albany





# Monitoring & Enforcement

- Monitoring is handled by the regional offices.
- Property owner is notified and staff conducts inspections, photographs conditions, completes a monitoring form, and provides this information to the property owner.
- Owner is encouraged to address concerns and follow staff recommendations on maintenance and repairs.
- Failure to address begins with letter and face-to-face meeting, if possible. Litigation can occur as a last resort.



**For more information visit  
[www.indianalandmarks.org](http://www.indianalandmarks.org)**