

PRESERVATION EASEMENT PROGRAM

Preservation Alliance for Greater Philadelphia
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www.preservationalliance.com



Drake Building
1512 Spruce Street

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Cover Images (clockwise from top left):
Commandant's Building, 4900 South Broad Street
Six Cotswold, Baltimore
1812 Delancey Street
Atlantic Building, 260 South Broad Street

INTRODUCTION

The Preservation Alliance for Greater Philadelphia is a 501(c)(3) non-profit organization whose mission is to preserve and protect the historic resources of the Philadelphia region. One of the ways the Alliance accomplishes that mission is through the acceptance of preservation easements on historic properties and sites.

A preservation easement is a voluntary legal agreement between a property owner and the Preservation Alliance that insures the long-term protection of the property's intrinsic historic value, even if the property is sold to subsequent owners. The Internal Revenue Service recognizes the voluntary donation of a preservation easement as a charitable tax deduction when such easements comply with certain conditions and regulations, and when donated to a "qualified organization." The Alliance is recognized as a qualified organization for accepting easements and has designed its program to comply with all IRS regulations. The Alliance recognizes that the donation of a preservation easement is a significant commitment by a property owner to historic preservation. In appreciation of this commitment, the Alliance presents each owner with a bronze preservation plaque to be placed on the property and acknowledges property owners that have contributed easements at its Annual Awards Luncheon in May of each year.

This brochure summarizes the Preservation Alliance's easement program and provides information on how to donate an easement. For additional information please contact **J. Randall Cotton**, Associate Director of the Preservation Alliance. He is a nationally recognized expert in the easement field and is responsible for managing the Alliance's easement program. Randy can be reached at 215-546-1146 ext. 2 or randy@preservationalliance.com.

HISTORY OF THE EASEMENT PROGRAM

Philadelphia's preservation easement program began in 1979 when the Philadelphia Historic Preservation Corporation (PHPC)—a predecessor of the Preservation Alliance—recognized that preservation easements were an effective way to protect significant historic properties, as well as provide a financial incentive to property owners through a substantial tax benefit.

PHPC's first easements were residential properties located in Philadelphia's Old City neighborhood, now a city-designated historic district. Subsequently, additional easements were accepted on both residential and commercial properties throughout the city. When PHPC merged with the Preservation Coalition to form the Preservation Alliance, the Alliance assumed the management of the easement program and continues to accept easement donations. Thus the Alliance's easement program represents almost 30 years of continuous and successful experience in accepting easements and protecting the historic value of donated easements.

Most of the easements accepted by the Alliance are on properties in the city of Philadelphia. However, the Alliance also holds easements on properties in adjacent counties and has, in certain limited cases, accepted easements on properties outside the immediate Philadelphia area. The Alliance is currently registered to accept easement donations in Massachusetts, Connecticut, New Jersey and Maryland, as well as Pennsylvania. Easements have been accepted on a wide range of property types and sizes including apartment buildings and condominiums, single-family houses, small and large office buildings, and open space connected with historic properties. The Alliance currently holds easements on over 200 properties (see examples illustrated throughout this brochure).

In the past, the Alliance gave priority to encouraging the donation of easements on commercial properties. In 2004, the Alliance began a new initiative to encourage donation of easements on single-family residential properties and provides special assistance to homeowners in the preparation of easement donations for such properties. In 2006, the Alliance began to accept easements on properties owned by nonprofit organizations to enable those organizations to comply with the requirements of capital improvement grants provided by the Save America's Treasures program and other public or foundation grants.

Cuthbert Street Rowhomes
112-118 Cuthbert Street



PRESERVATION EASEMENT FACTS

1. WHAT IS AN HISTORIC PRESERVATION EASEMENT?

A preservation easement is a means by which the owner of an historic property can insure its preservation and at the same time retain legal possession and use of the property. Through an easement, a property owner transfers to the Preservation Alliance certain rights pertaining to that property, which are specified in an easement agreement and are normally granted to the Alliance in perpetuity. The agreement is recorded as a part of the deed and requires that the current and all future owners maintain the historic character of the property in accordance with the easement.

The easement imposes restrictions on alterations to the historic characteristics of the property, requires ongoing maintenance of the property, and provides for monitoring and enforcement of the easement.

Almost all Alliance easements enable the property owner (or easement “donor”) to claim a charitable contribution, which may substantially reduce federal income taxes.

2. WHAT PROPERTIES ARE ELIGIBLE FOR A PRESERVATION EASEMENT?

A preservation easement can be placed on any property that has historic significance. This can include residential, commercial, institutional or industrial properties owned by individuals, private corporations, condominium associations or non-profit organizations. In determining whether or not to accept an easement donation on a property, the Alliance is guided in evaluating the historic significance of the property by such factors as listing on the National Register or the Philadelphia Register, location in designated or eligible historic districts, or other documentation that attests to the history, architecture and integrity of the property.

Although a preservation easement can be placed on any suitable historic property, only easement donations that comply with federal legislation are eligible for charitable tax deductions.

3. WHAT EASEMENTS ARE ELIGIBLE FOR CHARITABLE TAX DEDUCTIONS?

In 1980, federal legislation established criteria for the eligibility of easement donations for charitable tax deductions. These criteria are:

- The property must be individually listed on the National Register of Historic Places, or
- The property must be located in a National Register Historic District, and certified by the U.S. Department of the Interior as being of historic significance to that district.

There are currently 462 properties in the city of Philadelphia listed individually on the National Register as well as over 60 National Register districts containing close to 15,000 properties (not all of which may be considered contributing to the district). Other individually listed properties and districts exist in the surrounding counties. The Alliance can help you determine if a property is listed on the National Register or is in a National Register District.

The requirement that buildings located in historic districts be certified as contributing to significance of the district was reaffirmed by the IRS in June 2004. Certification requires the completion of a “Part 1” application that must be first reviewed by the Pennsylvania Bureau for Historic Preservation and approved by the National Park Service. The certification process should be completed prior to the conveyance of the easement.

4. WHO CAN DONATE AN EASEMENT

Any property owner—private, public or non-profit—that has legal title to an historic property can donate a preservation easement. The nature of ownership affects the tax benefits that may result from donating an easement, not the ability to donate an easement. The Alliance has accepted easements from private individuals, corporations, condominium associations and non-profit organizations.

Photo Left: Yarnall House
1635-37 Locust Street
Photo Right: 1631-33 Locust Street



5. HOW LONG DOES AN EASEMENT LAST?

An easement can be for any length of time to which the easement donor and the Alliance agree. However, the Internal Revenue Service allows charitable deductions to be taken only for easements donated in perpetuity.

6. WHAT IS THE AMOUNT OF TAX DEDUCTION RESULTING FROM AN EASEMENT DONATION?

The tax consequences of the gift of a preservation easement depend upon the property owner's particular tax situation in addition to the value of the easement donated. Interested easement donors should discuss the tax consequences with their accountant and attorney.

The general principle in determining an easement donation's value is relatively simple: what is the fair market value of the property without any easement restrictions, and what is the fair market value of the property with the easement restrictions in place? The difference between the two values is the value of the easement donation.

In practice however, this appraisal evaluation can be very complex and depends on many specific factors on the particular property. For example, is the property already restricted in other ways, such as a local preservation ordinance? The appraiser must thoroughly document and support the determinations. IRS regulations state that only an independent, certified real-estate appraiser, retained by the easement donor, can determine the equivalent cash value of a proper preservation easement donation.

Only for purposes of illustration, the Alliance has accepted preservation easements with values determined by an appraiser to range from 10% to 15% of the property's fair market value. While this range may be used by potential donors for planning purposes, the value of any particular easement donation can only be determined by a qualified appraiser.

7. WHAT RESTRICTIONS ARE PLACED ON AN EASEMENT PROPERTY?

The owner of an easement property retains legal possession and use of the property. The primary restrictions of an historic preservation easement relate to the physical maintenance and possible alterations to the property's exterior historic characteristics. Since 2006, when Congress passed further legislation, ALL exterior sides of an historic property must be protected by the easement, not just the front façade. After an easement is donated, the current and future owners must:

- maintain the property in a reasonable manner so that the historic appearance and characteristics do not deteriorate, or are lost, or demolished;
- seek approval from the Preservation Alliance prior to undertaking any changes that would affect the exterior, such as altering the windows, building additions, or undertaking restoration repairs beyond routine maintenance; and
- carry adequate fire and liability insurance and have the Alliance listed as an "additional insured party" on the owner's insurance policy.

The Alliance inspects easement properties on an annual basis to insure that these conditions are in compliance. In instances where easements are not maintained or not in compliance, the Alliance can exercise its legal right to enforce the easement. Fortunately, most owners recognize the value of their historic properties and the protection provided by the easement, and legal action has seldom been required.



Merchants' Row
57-63 North 3rd Street

315 Arch Street





Jayne House
1900 Delancey Street

8. WILL AN EASEMENT INVOLVE EXPENSIVE IMPROVEMENT TO THE EXTERIOR?

The Preservation Alliance's objective is to preserve the visual character of historic buildings in their settings. It does not require their full restoration. In many cases, an easement can be negotiated that accepts the condition of the building as it exists and provides guidelines for its future restoration. This insures that any changes to the exterior in the future will contribute toward the structure's eventual restoration.

9. WHAT IS THE PROCESS FOR MAKING CHANGES TO THE EXTERIOR AFTER AN EASEMENT HAS BEEN GRANTED?

The property owner must submit proposed changes to the Preservation Alliance, which determines whether or not they would be compatible with the building's historic and architectural character. All proposed changes of consequence require the prior approval of the Alliance.

10. WHAT HAPPENS IN THE EVENT OF THE ACCIDENTAL DESTRUCTION OF THE EXTERIOR?

In the event of a partial destruction of the exterior, the owner is required to make emergency repairs to render the property safe. The owner then works with the Preservation Alliance to restore the building to the easement specifications. Afterwards, the full terms of the easement continue to apply.

In the event of total destruction, the easement requires that any new building erected on the site be compatible with the historic buildings of the surrounding area.

DONATING AN EASEMENT TO AN ALLIANCE

Donating an easement to the Preservation Alliance is a relatively uncomplicated process. It consists of the following steps.

1. A property owner or a representative of a property owner (e.g., an attorney) contacts the Alliance to discuss the contribution of an easement.
2. The Alliance staff determines that the property is either listed on the National Register or is in and (in its opinion) contributes to a National Register District, and visits the property to determine that the Alliance would be interested in accepting an easement.
3. The Alliance issues a letter of intent to accept an easement to the property owner who will countersign the letter and return it with a deposit to cover preliminary legal fees in preparing easement documents. (An explanation of the Alliance's fees is included in the following section.)
4. If certification by the National Park Service (known as a Part 1 Application, which determines the property's historic status) is needed, the property owner prepares (usually with the assistance of a consultant retained by the owner) and submits the application. The property owner also selects an appraiser to determine the value of the easement to be contributed. The Alliance does not require the use of specific consultants to prepare Part 1 applications or appraisers. However, the Alliance can provide a list of experienced consultants and appraisers familiar with IRS regulations covering preservation easements.
5. The Alliance provides the property owner or attorney with the model easement legal agreement and the necessary attachments, which include the description of the portions of the property to be covered by the easement and any special conditions. (The model easement agreement is available on the Alliance's website www.preservationalliance.com/easements.)

1900 Rittenhouse Square



6. While the certification (if required) is being obtained from the National Park Service and the appraisal is being completed, the Alliance and the owner's attorney complete the legal agreement, including the description of the easement and a photographic record of the property.
7. If the property is subject to a mortgage, the mortgage holder is required to consent in writing that the mortgage will be subordinate to the easement.
8. Once the certification and appraisal are complete, the easement documents are signed by all parties, and the easement is recorded at the Register of Deeds.

The length of time required for this process is determined by the time required to obtain certification (if required) and complete the appraisal. If no certification is required, the process can be completed within approximately 30 to 45 days.

COSTS ASSOCIATED WITH DONATING AN EASEMENT

When donating an easement to the Preservation Alliance, the property owner is responsible for the cost of the appraisal and for any legal fees of the owner's own attorney.

The property owner is also required to pay the cost of the Alliance's legal fees, which are generally less than \$3,000 except in the case of large or complex easements. Approximately 50% of the anticipated legal fee is required in the form of a deposit at the signing of the letter of intent.

In 2006, federal legislation also established a \$500 filing fee to be paid to the IRS to accompany IRS Form 8283 when including an easement as part of a tax return. The \$500 filing fee applies to easement donations valued at more than \$10,000.

To be a qualified organization according to IRS regulations, the Alliance must have the capacity to monitor easement properties and enforce the terms of the easement in perpetuity. Therefore, the Alliance encourages easement donors to make a contribution to the Alliance to support the operations of the easement program and general operating expenses of the Alliance. The recommended donation is as follows:

- For easements up to \$3 million in appraised value, a donation of 5% of the easement value or \$5,000 whichever is greater;
- For easements over \$3 million in value, a donation of 5% of the value up to \$3 million and 3% of the value above \$3 million;
- For easements on properties owned by non-profit organizations complying with grant requirements for easement protection, a donation of \$5,000; and
- For property owners who donate two or more easements within a two-year period, the Alliance accepts a donation of 20% less for the second or subsequent easement donations.

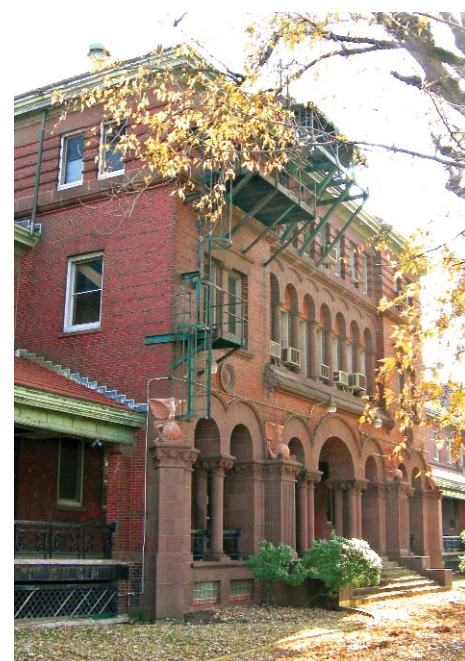
ADDITIONAL INFORMATION

All the information contained in this brochure is also included on the Preservation Alliance's website www.preservationalliance.com. Also on the website are the Alliance's standard easement agreement (which is modified to fit each individual property) and other information regarding easement donations. You may also contact John Andrew Gallery, Executive Director of the Preservation Alliance at 215-546-1146 x 1 or john@preservationalliance.com.



The Victory Building
1001-13 Chestnut Street

Marine Barracks
4701 South Broad Street





Perelman Building
2501 Fairmount Avenue



PRESERVATION ALLIANCE

for greater philadelphia

The mission of the Preservation Alliance is to actively promote the appreciation, protection, and appropriate use and development of the Philadelphia region's historic buildings, communities and landscapes.

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