

Land Trust Primer

Land trusts are local, state, regional, or national organizations directly involved in protecting land for its natural, recreational, scenic, historical, or productive value. Most land trusts are private, non-profit corporations, although some may be governmental or quasi-governmental entities.

The term “Land Trust” is an industry term. Land trusts are not legal “trusts.” Often, a “land trust” is called “conservancy” or “foundation,” which may vary by state restrictions on the use of the term “trust” in a corporation name. The entity *Bexar Land Trust d/b/a Green Spaces Alliance of South Texas* is legally a *non-profit corporation*.

Land trusts generally protect land either by *fee-simple* (outright) ownership or through the use of “conservation easements” or a combination. As corporations land trusts may also engage in other business, with basic non-profit rules in place: *i.e.*, any profits must be finally used towards charitable ends.

A “conservation easement” is a legally binding agreement between a landowner and a land trust. Conservation easements generally and basically restrict development of the land. Landowners typically seek IRS tax benefits associated with a charitable gift, and IRS regulations have effectively created national industry standards. However, state law controls the use and rights associated with land.

A conservation easement creates a legal obligation in the land trust to preserve the stated purposes of the easement. To do this the land trust generally visits and regularly monitors each parcel encumbered by an easement. While proper landowner relationships and communications can reduce the likelihood of a violation, the land trust must eventually seek recourse through legal action for any significant violation. If a land trust fails to take legal action, the easement may be extinguished, and the land trust may lose its IRS status as a “qualified organization.”

Landowners continue the use and enjoyment of their land and may sell, lease, or bequeath the ownership interest. Conservation easements are *appurtenant* (attached) to the land in perpetuity.

Before a conservation easement is bought, or accepted, reasonable real estate due diligence is necessary, which may include, but is not limited to, obtaining title commitments, appraisals, environmental assessments, surveys, and easement documentation reports (baseline surveys).

Additional work is usually required whenever attempting to qualify a particular property for any particular funding program such as for “Prop 1” (aquifer protection initiative), or “Camp Bullis” (endangered species habitat mitigation).

Green Spaces currently holds and monitors conservation easements on three (3) properties. Green Spaces currently works as a contractor for the City of San Antonio (COSA) in its Aquifer Protection Initiative. Green Spaces helps COSA identify property, meets with landowners, and arranges for or performs required due diligence.

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Tex. Nat. Res. Code § 183.001 (2010)

§ 183.001. Definitions

In this chapter:

- (1) "Conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:
 - (A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;
 - (B) protect natural resources;
 - (C) maintain or enhance air or water quality; or
 - (D) preserve the historical, architectural, archaeological, or cultural aspects of real property.
- (2) "Holder" means:
 - (A) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or
 - (B) a charitable corporation, charitable association, or charitable trust created or empowered to:
 - (i) retain or protect the natural, scenic, or open-space values of real property;
 - (ii) assure the availability of real property for agricultural, forest, recreational, or open-space use;
 - (iii) protect natural resources;
 - (iv) maintain or enhance air or water quality; or
 - (v) preserve the historical, architectural, archaeological, or cultural aspects of real property.
- (3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.
- (4) "Servient estate" means the real property burdened by the conservation easement.

§ 183.002. Creation, Conveyances, Acceptances, and Duration

- (a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.
- (b) A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance.
- (c) Except as provided by Section 183.003(b) of this code, a conservation easement is unlimited in duration unless the instrument creating it makes some other provision.
- (d) An interest that exists in real property at the time a conservation easement is created is not impaired unless the owner of the interest is a party to the conservation easement or consents to it.
- (e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.
- (f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

§ 183.003. Judicial Actions

- (a) An action affecting a conservation easement may be brought by:
 - (1) an owner of an interest in the real property burdened by the easement;
 - (2) a holder of the easement;
 - (3) a person having a third-party right of enforcement; or
 - (4) a person authorized by some other law.
- (b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

§ 183.004. Validity

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations on the owner of an interest in the burdened property or on the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

§ 183.005. Applicability

(a) This chapter applies to any interest created on or after September 1, 1983, that complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before September 1, 1983, if it would have been enforceable had it been created on or after September 1, 1983, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.