



## Conservation Easement Checklist

The following checklist is meant to provide general information that counsel may consider when advising or assisting a client involved in a conservation easement.

### A. Prior to the agreement

- Obtain thorough understanding of reasons for entering into conservation easement. Proper advice is not possible without knowing a client's motivations for considering an easement.
- Consider other conservation tools and determine their application in present circumstance. Other tools may include a gift of fee simple, lease or conservation agreement.
- Consider whether the intended qualified organization is appropriate for your client and whether the conservation goals of your client match up well with the qualified organization.
- Confirm it is a valid qualified organization and eligible under the federal ecological gifts program (if applicable).
- Evaluate and discuss with your client if they want the conservation easement to occur in their lifetime or as part of will and estate planning.
- Discuss with your client the nature of the legal interest being created in the land. Outline how a qualified organization may be involved in land use decisions (such as those made by the Alberta Energy and Utilities Board) and the implication of the perpetual nature of the conservation easement.
- Discuss limits on land use and development rights and what rights they may wish to retain. For example, discuss the potential for limited agricultural use of part of the land or the ability to build a trail system and use the area for recreation or hunting.
- Consider the tax implications of the proposed conservation easement, whether paid or donated.
- Outline tax options and implications for your client, including the split receipting option (if the qualified organization is amenable to partial or full payment for the easement).
- Consider the applicability of the federal Ecological Gifts program.
- Consider whether an independent appraisal of the land that is subject to the conservation easement should be conducted.
- Obtain property tax assessment information from the municipality.
- If needed, negotiate with the qualified organization regarding coverage of agreement costs, including surveys (if required), appraisals and legal costs.

## B. Review of the conservation easement agreement

- Thoroughly discuss with the granting landowner the expectations they have for allowable activities on the land.
- Review and advise your client regarding the contents of the easement agreement including:
  - the permitted or discretionary land uses and how they are to be expressed in the conservation easement agreement;
  - the geographic description of the conservation easement agreement area to fit grantor's needs and whether it is acceptable to the Registrar at the Land Titles Office;
  - ensure the purpose of the easement is clear and reflects the parties' intent;
  - ensure permitted and prohibited activity description are detailed and not overly open to interpretation (inviting enforcement actions); and
  - ensure effective date and timing of agreement are appropriate.
- Advise your client regarding activities that are not affected by the conservation easement agreement
  - oil and gas production
  - expropriation
- Liabilities and coverage of costs:
  - Review potential liabilities and coverage of costs.
  - Consider and advise grantor of liability potential for third party access.
  - Ensure liability and indemnification obligations are expressed in the agreement. Typically indemnity clauses in agreements cover the qualified organization against damages to land accruing from landowner activities.
  - Ensure insurance coverage is dealt with in the agreement, including who is responsible to continue the coverage.
  - Obtain assessment information from the municipality regarding property tax assessments.
  - Ensure the agreement dictates which party is responsible for property taxes.
  - Consider the designation of additional qualified organizations for the purposes of monitoring and enforcement.
- Review the management plan (if your client retains specific management obligations), including:
  - review and outline management obligations in relation to the conservation easement;
  - confirm responsible parties regarding management (typically the qualified organization); and
  - confirm costs associated with management that are obligations of the client.
- Outline other potential costs associated with easement and easement enforcement, including:
  - the activities related to remedying damages from non-compliance activities that may accrue to the landowner; and
  - potential for enforcement costs (pursuant to the *Rules of Court*).

### **C. Tax implications**

- Evaluate the complexity of tax and estate planning issues and retain outside legal and accounting expertise if needed.
- Outline to client the tax treatment of easement lands, whether donation or purchased.
- Outline treatment of Ecological Gifts (if relevant).
- Outline estate planning options considering:
  - reason for easement;
  - estate plans and capital property deemed disposition;
  - affects on current or future will; and
  - details required to effect a conservation easement agreement after death (i.e. sufficient instruction for executor).
- Confirm impact of conservation easement designation on property taxes.

### **D. Agreement Registration**

- Complete and send form (*Conservation Easement Registration Regulation*) providing notice of intent to register a conservation easement to the municipality.
- Obtain written confirmation from the municipality of receipt of notice.
- Ensure the description of the land that is subject to the easement is described in a manner that is acceptable to the Registrar.
- Send registration to Land Titles Office for registration on title 90 days from day of municipal confirmation, with statutory declaration of qualified organization (*Conservation Easement Registration Regulation*)
- Discern whether priority on title for conservation easement can be obtained and seek title priority.

## **E. Post execution - management and sale**

Implications of a conservation easement on the selling or purchasing of land

Before property is listed:

- Confirm and outline notification requirements as outlined in the agreement.
- Discuss and review confidentiality concerns regarding environmental information about the property.

When the property is listed:

- Modify warranties in the listing agreement regarding environmental information or the environmental condition of the property.
- Ensure seller is aware of the implication of failing to disclose possible constraints on land use when conservation easement being registered on title.
- Ensure that the seller understands all warranties that he or she has given or intends to give in the listing agreement about environmental information or the environmental condition of the property.

Purchasing Property:

- Check land title for conservation easement notation.
- Review conservation easement agreement and advise buyer of the implications of the agreement on current and future land use and development.
- Contact the qualified organization and discuss any potential issues or amendments that may be possible.