



*For more information about donating
a VOF easement, call 1.844.863.9800
or visit vof.org*

TEN STEPS TO CONVEYING AN EASEMENT TO VOF

Step 1: Gathering Information

The Virginia Outdoors Foundation has offices around the Commonwealth. Call 1.844.863.9800 to request information and to discuss the general easement process. If you are interested in further exploring the possibility of donating an easement, we will connect you to the easement staff person in your region of the state. If an easement seems compatible with your long-term goals for your property, staff will ask you to complete a VOF application and (if applicable) a Preservation Trust Fund application. VOF staff will conduct preliminary research into your property's conservation values and review the project with a team of colleagues to gain preliminary approval to proceed with your easement proposal.

Step 2: Site Visit

If the conservation values of your property meet VOF's criteria and your personal objectives for the land are compatible with VOF's requirements, we will arrange a visit. On site we will observe and inventory the features of your property, its natural resources, and its open-space characteristics. We will discuss with you your options for an easement that will both meet your goals and protect the conservation values of the property.

Step 3: Getting Additional Help

Once you understand the ramifications of placing an easement on your property and feel comfortable that such an easement will meet your goals for the property, you should discuss this matter with your attorney or tax advisor. If your property has a mortgage lien on it, you must also discuss the potential easement with your mortgage lender, as the lender will be a party to the easement. (See "Subordination of Deed of Trust" paragraph, page 4 below). In addition, many landowners will talk to an appraiser at this juncture to get a ballpark idea of the potential tax benefits of placing an easement on their property.

Step 4: Preliminary Agreement

Your VOF staff person will work with you in developing the basic requirements that will be included in the deed of easement. If you wish to proceed with the easement at this stage, you will be asked to sign a "Terms Agreement" and "Disclosure Form." These signed documents indicate a serious interest—though not a binding obligation—to pursue an easement with the discussed terms.

Step 5: Title Search and Property Boundaries

Early in the process, your attorney will conduct a full 60-year title search and provide VOF with copies of all recorded documents related to your property. If your land is owned by an entity such as an LLC, your attorney must also provide a copy of those pertinent documents (such as articles of incorporation, operating agreements, etc.), along with evidence showing who is authorized to sign the deed of easement. Upon receipt of the title report, VOF staff will make sure there are no unresolved title issues. Additionally, VOF staff will analyze all deeds and survey plats and utilize GIS mapping programs to determine if the boundaries of your property are clearly delineated. If this analysis finds the property descriptions to be lacking in accurate data, new surveys may be required for a portion (or all) of the property.

Step 6: Staff Review

A VOF project review team will discuss the characteristics of your property and the proposed easement terms and will analyze any title or property description issues and what steps may be necessary to resolve them. The team may suggest additional or modified easement terms to ensure that the project can be recommended favorably to the Board of Trustees (the “Board”).

Step 7: Board of Trustees Meeting Preparation

- (a) Draft Deed: Your VOF staff person will draft a deed of easement for you to discuss with your attorney. Between your VOF staff person and your attorney, multiple revisions may be necessary to ready the project for submission to the Board. The final draft of the deed must be approved by you and your attorney on or before the Easement Draft Deadline prior to the board meeting at which you wish to submit your easement for consideration. (See page 4 for Easement Draft Deadlines.)

- (b) Easement Summary: Prior to submission of your easement to the Board, you will receive a summary of your easement and pertinent maps identical to the material the Board will review. Please review these documents carefully to make sure they accurately reflect the terms that you have agreed to.

- (c) Submission to the Board: When you feel comfortable moving forward to the board meeting for its consideration, a \$1500 Processing Fee must be received by the due date shown in the table below.

- (d) Fees: In addition to the Processing Fee, there is an additional fee of \$3000-3500 for preparation of a Baseline Documentation Report. Preservation Trust Fund (PTF) grants are available to help income-eligible landowners with expenses, including the Processing Fee and other costs of conveying an open-space easement to VOF such as legal, appraisal, and survey costs. Priority is given to applicants who demonstrate financial need and who wish to convey an easement on a family farm. If you think that you may qualify, discuss this with your VOF staff person.

Step 8: Board of Trustees Meeting

- (a) Your easement proposal must be approved by the VOF Board of Trustees. The Board will meet three times in 2024 on the dates shown in the table below to consider easement proposals. Staff will present your proposal to the Board with its recommendation.

- (b) The Board may approve the proposal or approve it conditioned upon modification(s). (Less commonly, the Board may table their decision or may not support a proposal.) The Board’s approval does not obligate you to complete the easement process and record the easement. You may finalize and record the easement any time within one year of Board approval. If more than one year has passed since Board approval and you decide to record the easement, your project proposal must be resubmitted to the Board with a \$1,000 reconsideration fee. However, if there are no changes in the terms and conditions, the one-year recordation period may be extended by the VOF Executive Director, who may also waive the fee for good cause shown.

- (c) Prior to recordation, any proposed change in any terms of the easement that would result in a significantly less restrictive easement than the one approved by the Board must be resubmitted to the Board for reconsideration.

Step 9: Baseline Documentation Report (BDR).

- (a) A Baseline Documentation Report (BDR) must be completed before your easement is finalized. (If you intend to apply for tax benefits after recording the easement, the federal tax program for conservation easements requires that you make available to VOF a BDR describing the characteristics and condition of your property prior to recordation of the easement.) The BDR contains maps and photos of your property and related documents. It establishes in detail the condition of the property at the time of the gift and becomes the basis of comparison for future monitoring of the easement.
- (b) The BDR will be sent to you for your review and a fee of \$3,000 - \$3,500 will be charged at that time. Corrections/updates (if needed) are made by staff and all owners sign the “BDR Acknowledgement Form” attesting to its accuracy.
- (c) VOF staff prepares the majority of BDRs for landowners. However, in past years organizations other than VOF occasionally prepared BDRs. If interested, discuss this option with VOF staff.

Step 10: Finalizing Deed of Easement and Recordation.

- (a) Your attorney will send the deed of easement to VOF for final review. We will suggest final edits, if any, and return the deed to your attorney for final document preparation and the obtaining of signatures. All legal owners must sign the deed, and any mortgage lender and its trustee(s) must sign the deed to subordinate the deed of trust to the deed of easement. VOF signs the deed last. The VOF staff member authorized to sign deeds of easement will not sign the deed until it is verified that the signed VOF Application and Disclosure forms, as well as the BDR and the BDR Acknowledgement form, are in our files. After such verification, VOF signs the deed.
- (b) The deed of easement is recorded at the Clerk’s Office by VOF or your attorney after conducting a final title search (“performing a title bring-down”).

ADDITIONAL INFORMATION The dates of board meetings in 2024 and final draft deadlines for each board meeting are as follows:

Easement Draft Deadlines	Processing Fee Payment Due Dates	Board Meeting Dates
February 14, 2024	March 18, 2024	March 26 & 27, 2024
May 1, 2024	May 29, 2024	June 12 & 13, 2024
August 28, 2024	September 26, 2024	October 10, 2024

Subordination of deed of trust

A lender holding a deed of trust on your property must subordinate its deed of trust to protect the easement in the event of foreclosure and for your easement to be a tax-deductible charitable contribution under federal tax law. You or your attorney should contact the lender early in the process, both to confirm willingness of the lender to subordinate and because the lender's review can take a significant amount of time and may create additional hurdles. (For example, lender subordination is sometimes dependent on the refinancing of the loan.) or the costs of completing your easement.

Appraisal

VOF does not require an appraisal for a gift of easement. However, to claim a federal tax deduction or a state tax credit for a non-cash charitable gift such as a gift of easement, you must engage an independent appraiser to determine the value of your gift. The IRS requires that the appraisal be made by an IRS-defined qualified appraiser; a Certified General Appraiser will probably qualify. VOF does not make specific recommendations as to which appraisers you should use and is not involved in the appraisal process. To satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to recordation of the gift and no later than the due date (with any extensions) of your tax return.

Timing of Easement Donations

VOF recommends that you take plenty of time to think through the donation of an easement, because an easement is forever. If you have decided to donate an easement and wish to do so prior to the end of a particular calendar year for tax purposes, there are several reasons to begin the process as early as possible in that calendar year:

- There is a limit on the amount of tax credits that the Department of Taxation may issue. The tax credit ceiling is currently \$75 million per calendar year.
- The Department of Taxation does not guarantee that any LPC-1 Applications for Land Preservation Credits filed after the close of the first business day of November 2024 will be processed in time to issue the credits and enable you to make transfers of credits in 2024. To meet this filing deadline for projects going to the board in September of this year, you should be in contact with your attorney, your appraiser, and your tax advisor so that their respective tasks can be coordinated and completed to meet this deadline.
- Tax credits of \$1 million or more will be issued by the Department of Taxation only if the conservation value of your donation has been verified by the Director of the Department of Conservation and Recreation (DCR), based on criteria adopted by the Virginia Land Conservation Foundation (VLCF). To avoid an adverse post-filing decision from DCR, you may obtain a pre-filing review of the conservation value through DCR. Contact Suzan Bulbulkaya at DCR (804) 371-5218.
- Several steps, such as the appraisal, bank subordination, legal review, and tax credit registration, may take a long time to complete.
- VOF staff, landowners' attorneys, appraisers, and others involved in the easement process will have more time to work on projects in the first three quarters of the year, and projects incomplete by the fourth quarter may exceed staff's capacity to complete before the end of the year.