

Conveyance of a Preservation Easement to the Maryland Historical Trust

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- The Secretary of the Interior's *Standards for the Treatment of Historic Properties*

Should you have any questions, please contact:

Historic Preservation Easement Program

mht.easements@maryland.gov

Maryland Historical Trust
100 Community Place
Crownsville, MD 21032-2023
www.mht.maryland.gov



Historic Preservation Easements: A Preservation Tool

What is a Historic Preservation Easement?

The State of Maryland's preservation easements are managed by the Maryland Historical Trust (MHT). A preservation easement is a type of conservation easement – a private legal right given by the owner of a property to a qualified easement-holding organization or governmental entity by written contract for the purpose of protecting a property with historic, architectural, or archeological significance in perpetuity. A preservation easement can safeguard historic homes, farmsteads, archeological sites, historic landscapes, and other historic structures. Considered the strongest historic preservation tool available, MHT acquires easements in a variety of ways, including:

- donation by property owner
- as mitigation for a State or Federally property transfer; or
- as a condition of State financing (capital grants, bond bills, or loans) for construction projects that affect historic and cultural properties.

Typically, owners of easement properties agree that they must receive MHT's consent and approval before making changes to the protected building, and before constructing new buildings. Owners also agree to maintain the property and buildings in good condition, and to provide limited access for the public to view the historic structures.

The easement-holding organization is responsible for ensuring the current and all future owners' compliance with the terms of the easement, to protect the property forever. Donations of preservation easements may also provide certain tax benefits to the property owner. In some cases, conveyance of an easement is a requirement of receiving financial support from the state or federal government.

Summary: The Maryland Historical Trust Preservation Easement Program

MHT holds more than 700 easements encompassing approximately 7,000 acres statewide on a variety of buildings and properties, including Native American archaeological sites, homes and farms of Maryland's earliest families, churches of all denominations, schools, commercial buildings, factories, a WWII bomber factory, a furnace, lighthouses, bridges,

railroad stations, mills, museums, parks, and monuments. Our easements can cover interior, exterior and archeological features.

Guidelines for Review

A preservation easement restricts changes to a property that would be inconsistent with the preservation of the historic characteristics of the property. In determining what changes are appropriate for each easement property, MHT consults:

- the language in the specific Deed of Easement
- the condition and significance of the resource
- the details of the proposed project and
- The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) (the "Standards"), published by the National Park Service.

The *Standards* are nationally accepted guidelines for the treatment of historic buildings, which purpose is to preserve those elements that contribute to a building's historic character. The Secretary of the Interior's Standards are intended to be flexible and accommodate a wide variety of building types and project goals. Each property and each easement are unique; therefore, MHT considers each project individually.

The MHT Easement staff works with property owners who want to change or make alterations to their property. The steps for submitting a change request to MHT is found on the MHT website under the "Project Review & Protection" heading on the main menu bar. MHT will review proposed changes or alterations to the property and advise owners on the best ways to maintain and preserve their properties. The Maryland Historical Trust Easement Committee consists of MHT staff architectural historians, archeologists, technical and materials specialists, and rehabilitation experts, and requests are coordinated by the Easement Administrator. The committee meets every three weeks to review proposed modifications to easement properties and to make recommendations regarding a proposal's compliance with the terms of the easement.

Inspections

Each Deed of Easement has a provision that grants MHT the right to inspect the property, after giving notice to the owner, to determine the condition of the property and whether the owner is complying with the terms of the Easement. Inspections are performed on a rolling basis, typically once every three-to-five years. Frequency of visits, however, may fluctuate in order to accommodate special circumstances, such as the sale of a property or damage due to a catastrophic event.

Scope of Easement

Easements that qualify for the federal tax deduction are required by the IRS to be perpetual as are easements extracted by state or federal property transfer. Conveyance of an easement required as the result of financial support from the state or federal government will be for a fixed term of years. The easements are drafted by the Maryland Office of Attorney General and must be approved by the Director of the MHT. Typically, the scope of the easement includes the exterior and/or interior of the resource(s), as well as the land or a portion of the land surrounding the resource. The easement may also protect against deterioration by imposing maintenance obligations on the owner.

Conveying an Easement

The owner may also be responsible for costs associated with the legal documentation required to process the easement, such as property title work or survey/site plan work. However, MHT does not charge any administrative fees for processing or administering the easements.

Gift Easements

MHT will consider accepting a donation of a gift easement from an owner only if the property, building, or structure is listed on, or is eligible for listing in the National Register of Historic Places, or is located in a registered national historic district. Property owners may begin this process by submitting a letter to MHT expressing their desire to donate an easement. Please note that property owners must provide adequate information for consideration of the request. Documentation on the value and significance of the resource/property, as well as current and historic photographs (if available) may be required. Easement donations may be eligible for a charitable tax deduction. Please consult with the IRS and/or a tax professional for more information on what deductions may be available to you.

Easement Conveyance Checklist of Required Items

The Maryland Historical Trust in consultation with the Office of the Attorney General of Maryland will prepare the easement document. Both your and our attorneys will need to review and approve of the draft easement prior to the preparation of a final easement.

To develop a mutually acceptable final draft easement for your review, we will need the following items which must be acceptable to and approved by the MHT:

- A copy of your **Title Insurance Policy**, issued by a Maryland licensed Title Company to which are attached complete copies of vesting documents, liens, encumbrances and rights-of-way upon the property.
- A **Property and Judgment Report** (“P&J Report”) from the date of easement grantor/property owner’s acquisition of the property through the date of easement conveyance, prepared by a Maryland licensed Title Company, to which are attached any exception documents not previously provided.
 - If property owner is unable to submit an existing homeowner’s title insurance policy with a P&J Report, MHT will accept a new owner’s title policy issued to MHT or a 60 year title search and report prepared by a Maryland licensed Title Company.
 - Title Policies, 60-year title reports and P&J Reports may contain exceptions only to those items which have been approved by MHT. If easement grantor/property owner elects to have a new title policy issued to MHT, such policy may not contain the standard pre-printed exceptions for survey matters, general or blanket exceptions, mechanics or materialman’s liens. Taxes must be paid through date of easement recordation.
 - Immediately following the recordation of the easement, a bring-to-date P&J Report must be submitted to MHT in order to finalize the easement conveyance process.
- A **legal property description** (metes and bounds) in paragraph form (if not in the deed) for the easement property.
- A **scaled site plan or plat** locating the building(s) footprint(s) and identifying the metes and bounds, as described in the written legal property description. (The legal property description must match the scaled site plan.)
- A **Property (Hazard) Insurance Policy** to which the Maryland Historical Trust is added to the policy as additionally insured. An endorsement or declaration page stating the MHT as additionally insured generally will be issued.

Additional required items for Organizations and Corporations:

- Corporate Resolutions** (sample form attached) to convey an easement to the Maryland Historical Trust on the property which will benefit from the program; the name, title and signature of the person(s) authorized to sign the Deed of Easement and receive future notices.
- A print-out of the **Certificate of Good Standing** from the Maryland State Department of Assessments and Taxation, visit their website at

www.dat.state.md.us for more information. (30 days prior to easement being recorded.)

- Articles of Incorporation and Bylaws or Articles of Organization and Operating Agreement.**
- Letter of Determination of Tax Exempt Status.** (if applicable)
- Approved Capital Project Grant Application** (for Bond Bills, approved by the Board of Public Works and fully executed by all parties).

The MHT staff will coordinate a site visit with you to take photographs of the property and discuss the easement after all the requirements above are met and deemed satisfactory.

Please mail all materials to:

Historic Preservation Easement Program
Maryland Historical Trust
100 Community Place, Third Floor
Crownsville, Maryland 21032
Email: mht.easements@maryland.gov

Resolution and Authorized Signature Format

CERTIFICATE
and
CORPORATE RESOLUTION

I, _____, the Secretary of _____ (the “Corporation”), certify that:

1. I am the duly elected and acting Secretary of the Corporation, which is organized and existing in good standing under the laws of Maryland.
2. Paragraph three below constitutes a true and correct statement of the resolutions (the “Resolutions”) that were duly adopted by the Board of Directors of the Corporation at a meeting held on _____, 20____.
3. RESOLVED: That the Corporation is authorized by this resolution to convey to the Maryland Historical Trust (“MHT”), an instrumentality of the State of Maryland within the Maryland Department of Planning, a historic preservation easement with respect to the property located at _____, in compliance with [Chapter ___, Laws of Maryland of ____] [an MOU between _____ and _____, dated ____; and it is
4. FURTHER RESOLVED: That the approval of the Corporation’s Board of Directors is deemed conclusively evidenced by the execution of any and all documents required in connection with the easement by one of the authorized signatories listed in Paragraph 9

below; and the Secretary of the Corporation is authorized to certify these resolutions to MHT; and it is

5. FURTHER RESOLVED: That if there shall be any conflict between (i) the easement documents or these resolutions, and (ii) the By-laws and Articles of Incorporation of the Corporation, the language of the easement documents or these Resolutions, as the case may be, shall control.
6. The Resolutions have not been amended, rescinded or modified and are in full force and effect on this date in the form originally adopted, and conform with the Corporation's Articles of Incorporation and By-Laws.
7. The Corporation's Articles of Incorporation and By-Laws, as amended, have been submitted to MHT, and have not been amended since the date of their submission and are in full force and effect as of this date.
8. The following persons (i) are duly elected, qualified and acting officers of the Corporation in the capacity indicated, or (ii) are otherwise authorized to execute, acknowledge, and deliver documents on behalf of the Corporation for purposes of binding the Corporation; and (iii) the signatures set forth after their names and offices or titles are their true and genuine signatures:

Name

Office/Title

Signature

WITNESS my signature and the seal of the Corporation this _____ day of _____, 20__.

(SEAL)

Secretary of the Corporation