

7 Facts You Should Know About Conservation Easements



Here are some facts you should know before signing away your development rights under a conservation easement.

Fact 1

While, as a landowner you have a "bundle" of property rights, the most important are your development rights. When you sign away these rights, you are no longer the "dominant estate" holder. You surrender your controlling interests to a partner and become "subservient" to their demands.

Fact 2

Land trust brokers are salespeople and have no legal obligation to disclose information that might discourage the sale of the conservation easement. The Ninth Circuit Court of Appeals has held that pre-contract promises, conversations, commitments, brochures and manuals, even from the government, are not binding.

Fact 3

Land trusts frequently "flip" conservation easements to make quick money. In one example, The Nature Conservancy paid \$1.2 million for an easement and promptly sold it to the Bureau of Land Management for \$1.4 million. This enabled the government to control the private property with no publicity and place the landowner under the scrutiny of a federal bureaucracy.

Fact 4

Third party land trusts, non-profits or public agencies can attack or enforce the agreement you made with your land trust thereby changing the original agreement.

Fact 5

Easement deeds use broad language that expands the trust's control but very specific language that limits the landowner's rights.

Fact 6

Through "mitigation banking," your property can become part of a databank, condemned and used to offset environmental damage to another conservation eased property hundreds of miles away. The trust can then use your land for purposes you never intended.

Fact 7

Because the ownership rights are muddled between taxes, restrictions and best practices requirements, it can be difficult to find a buyer willing to pay a fair market price for the land *or* the promised tax deductions.



"Conservation easements are often a short-term windfall in exchange for a long-term property loss."

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