

10 STEPS TO CONVEYING A VOF EASEMENT

STEP 1: CONSIDERATION OF EASEMENT

You should contact a Virginia Outdoors Foundation (VOF) regional office to request information and to discuss the general easement process and VOF guidelines. Consult with your family and your legal and tax advisors. After that, if you are interested in further exploring the possibility of donating an easement to us, please call the regional office for discussion of the property's features and your goals and submit to us an application form (available from the regional office or the VOF website).

STEP 2: SITE VISIT

We will arrange to meet with you and visit your property. On site we will observe and inventory the features of your property and its natural and open-space resources and discuss with you options for easement terms that will meet your goals, protect the conservation values of the property, and meet our standards. The terms will be based on VOF's guidelines and our sample deed of easement.

STEP 3: PRELIMINARY AGREEMENT

After consulting with your advisors and deciding to proceed, you will reach a preliminary agreement with us on the proposed terms of the easement, and we will move the proposal forward. At this step, if there is a deed of trust or mortgage on the property, you should make sure that the lender will agree to subordinate its deed of trust or mortgage to the easement (see page 3 below for further information about subordinations).

STEP 4: VOF STAGE ONE REVIEW

A VOF Staff Review Team will discuss the characteristics of your property, the proposed easement terms, and any additional or modified easement terms it thinks may be necessary to protect the conservation values of your property. After consideration by the review team, we will discuss with you any modifications of the easement terms suggested by the team.

STEP 5: BOARD MEETING PREPARATION

Your attorney and the VOF staff will develop a draft deed of easement including a legal description of your property for your review. Several revisions of the draft easement are typically necessary before it is in final form and ready for submission to the VOF Board of Trustees. Your attorney (or a title company) will give us a preliminary title opinion on your property. You or your attorney should also give us copies of any recorded survey plats of the property and a letter to us stating your desire to donate the easement (letter of intent). The final draft deed, title opinion, and letter of intent must be received by us on or before the final draft deadline prior to a board meeting (see page 3 for timeline).

STEP 6: VOF STAGE TWO REVIEW

A regional review team reviews the proposal approximately one month prior to the Board meeting. The regional review team suggests any changes in the proposed easement terms and determines whether the proposal is ready for consideration by the Board.



STEP 7: VOF BOARD MEETING

The easement proposal must be approved by the VOF Board of Trustees. The Board meets four times in 2012 on the dates set forth on the timeline set forth below. Staff presents the proposal to the Board with its recommendations. The Board may approve the proposal, approve it conditioned upon modification(s), or disapprove it. The Board’s approval does not obligate you to complete the easement process and record the deed. You may finalize and record the easement at any time within one year of Board approval. An easement that is not recorded within one year of Board approval must be resubmitted to the Board for reconsideration, but is subject to a \$1,000 reconsideration fee. However, in the event that there are no changes in terms and conditions, this time period may be extended by the VOF Executive Director, and he may waive the fee for good cause shown. Prior to recordation, a proposed change in any terms of the easement that would result in a less restrictive easement than the one approved by the Board has to be resubmitted to the Board for its consideration.

STEP 8: BASELINE DOCUMENTATION REPORT

We will complete a Baseline Documentation Report (BDR) about the characteristics and condition of your property prior to recordation of the easement. This BDR contains maps and photos of the property and related documents. It will be sent to you for your review. If the information in the BDR is accurate, you will sign the BDR acknowledgment form and return it to us.

STEP 9: FINALIZING EASEMENT DRAFT

Your attorney will send the deed of easement to us for final review. We will suggest final edits, if any, and return the deed to your attorney for editing and signatures. All legal owners must sign the deed, and any mortgage lender and its trustees must sign the deed to subordinate the deed of trust to the deed of easement. We sign 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 and signed BDR Acknowledgement form are in our files. After such verification, we sign the deed.

STEP 10: RECORDATION

VOF will send the fully executed deed of easement to your attorney, who will record the deed after a final title search (“performing a title bring-down”), In certain circumstances, VOF staff may record the deed after receiving the final title report. You should obtain and keep a copy of the recorded deed of easement for your files.

TIMELINE

The dates of board meetings in 2012 and final draft deadlines for each board meeting are as follows:

Preliminary Draft Deadlines	Final Draft Deadlines	Board Meeting Dates
December 8, 2011	December 22, 2011	February 1, 2012
February 20, 2012	March 5, 2012	April 18, 2012
May 15, 2012	May 29, 2012	July 11, 2012
September 3, 2012	September 17, 2012	October 30–31, 2012



ADDITIONAL INFORMATION

SUBORDINATION OF DEEDS OF TRUSTS

If there is a deed of trust on your property, the lender is required to subordinate its deed of trust lien to the easement for the easement to be a tax deductible charitable contribution under federal tax law and to protect the easement in the event of foreclosure. You or your attorney should contact the lender as soon as possible, because the lender's review may take a considerable length of time. In addition, the lender may require an appraisal prior to agreeing to subordinate its lien, which may affect the sequence of events set forth here or the costs of completing your easement. VOF has experienced problems in getting lenders to subordinate their liens.

APPRAISAL

We do not require an appraisal for a gift of easement. However, in order 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. We strongly recommend the use of a Certified General Appraiser. We do not make specific recommendations on which appraisers you should use, and we are not involved in the appraisal process. To satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to the gift and no later than when you file your tax returns.

TIMING OF EASEMENT DONATIONS

We recommend that you take plenty of time to think through the donation of an easement to us, since 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 in each calendar year. The tax credit ceiling was set in calendar year 2008 at \$100 million, which ceiling is adjusted annually by changes in the consumer price index.
- ✦ In recent years, the Department of Taxation has required that LPC forms be filed before December 1 in order to be able to process tax credit applications in the same year.
- ✦ 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, lenders, and others involved in the easement process will have more time to work on projects in the first two to three quarters of the calendar year, and projects incomplete by the fourth quarter may exceed staff's capacity to complete before the end of the year.