



**PRESERVATION
RESOURCE CENTER**

— of NEW ORLEANS —

PRESERVATION EASEMENT

Policies and Procedures for Donations

The Preservation Resource Center's easement donation program enables a property owner-taxpayer to claim a charitable deduction on his or her tax return for the value of a perpetual servitude over a structure that meets both the Federal government's requirements as well as the Preservation Resource Center's own standards. A donation enables the Preservation Resource Center, as a qualified non-profit (501)(c)(3) organization, dedicated to preserving our architectural heritage, to possibly require changes to the structure as a condition of acceptance, to require future maintenance of the structure and to prohibit demolition and changes not in keeping with its architectural style. The decision to donate a preservation easement is almost always voluntary, but once made, it binds both the current owner and future owners to protect the property which is subject to the easement.

POLICY

The Preservation Resource Center maintains the highest standards in its requirements regarding donated structures. The Easement Review Committee will apply these standards in its decision, but may take mitigating and extenuating circumstances into account in making those decisions.

IRS REQUIREMENTS

Because of the complexities of the Federal tax code and the applicable IRS regulations, the Preservation Resource Center does not undertake to advise prospective donors as to the tax aspects of any donation, and any such donor is urged to obtain such advice from his or her own tax attorney or accountant. Generally, however, in order for the taxpayer to claim the charitable deduction with respect to a structure, the Internal Revenue Code requires that the structure be:

Individually listed on the National Register of Historic Places; or

*Located in a district listed on the National Register of Historic Places, or a qualified local historic district, and the structure itself must be certified by the Secretary of the Interior as being of historic significance to the district
(Historic Preservation Certification – Part 1).*

This listing of certification may be obtained after acceptance by the Preservation Resource Center; but if the donation is to apply to the owner's tax return for a given year, the listing or certification must be obtained before the due date (including extensions) for filing his or her tax return for that year.

For example, to apply to a property owner's tax return for 2016, the *Act of Donation* must occur and be recorded before December 31, 2016, but the listing or certification may be subsequent – as late as any of the extension dates for filing his or her 2016 return. However, in order to minimize costs and avoid duplication of effort, applicants are advised to obtain listing and certification prior to application. Applications for certification may be obtained from the State of Louisiana, Division of Historic Preservation, at Post Office Box 44247, Baton Rouge, Louisiana, 70804, by phone at (225) 342-8160, or online at <http://www.crt.state.la.us/cultural-development/historic-preservation/>.

Easement deductions **will not** be allowed for the donation of property subject to a mortgage unless the mortgage subordinates its rights in the property to the right of the Preservation Resource Center to enforce the conservation purposes of the gift in perpetuity. (Effective for donations made after February 13, 1986.) Treas. Regs. Sec. 1.170A-14(g)(2). In order to comply with this requirement, **all mortgagees of donated property must execute a subordination agreement prior to the act of donation.**

In order to deduct the value of the charitable contribution, a taxpayer must have a qualified appraisal (as defined in Treas. Reg. Sec. 1.170A-14) for donations of property valued in excess of \$5,000.00. The analysis, opinions, and conclusions in this report should be in accordance with the standards and reporting requirements of the *Uniform Standards of Professional Practice* (USPAP) as adopted by the Appraisal Foundation, the Standards of Professional Appraisal Practice of the Appraisal Institute, and the requirements of the State of Louisiana for certified appraisers.

The Preservation Resource Center **will not** undertake to advise the donor as to the content or form of the qualified appraisal. The Preservation Resource Center is, however, required by Treas. Regs. Sec. 1.170A-14, to sign the appraisal summary, but only as an acknowledgement of receipt of the property.

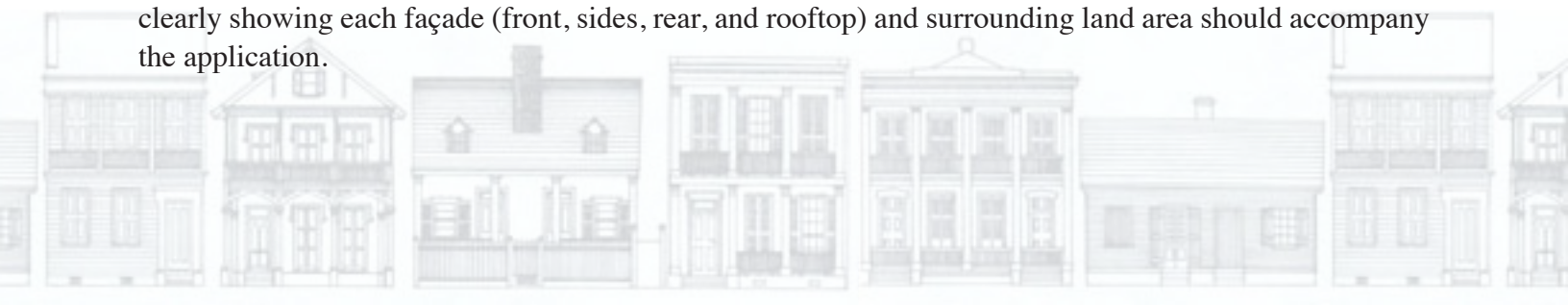
STRUCTURES CONSIDERED

Structures in all National Register Historic Districts or in a qualified local historic district or individually listed on the National Register of Historic Places, will qualify for consideration by the Preservation Resource Center.

The Preservation Resource Center will also accept easement donations on property ineligible for the tax benefits for the purpose of protecting those properties from future demolition or inappropriate alteration.

APPLICATION AND APPROVAL PROCEDURES

Applicants should complete, sign, and submit an application form for each structure of separate lot of record proposed for donation. The application should be submitted prior to November 1st of the year for which the tax benefit is sought. A \$1,000.00 application fee, and two (2) sets of 8"x10" color photographs, clearly showing each façade (front, sides, rear, and rooftop) and surrounding land area should accompany the application.



A map of the historic district clearly identifying the lot on which the structure is located and a copy of the most recent survey must also accompany the application. If the easement is being donated following submission of drawings or plans for renovation, an additional set of 8x10 photographs showing the completed renovation must also be submitted at the time of completion.

If a Department of the Interior certification has been obtained at the time of application, a copy of the *Historic Preservation Certification - Part 1*, and the approval letter should be submitted.

The Preservation Resource Center utilizes the *Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings* promulgated by the United States Department of the Interior, as the minimum standard for considering the acceptance of preservation easement donations. However, each application for an easement donation will be reviewed on a case-by-case basis. The Preservation Resource Center reserves the right to impose any and all such additional standards and requirements for easement donations, and to reject any proposed easement donation, as the Preservation Resource Center deems appropriate in its sole, unlimited discretion. Applicants should not assume that compliance with the Department of the Interior's *Standards* will guarantee acceptance of a preservation easement donation by the Preservation Resource Center.

In its consideration, the Easement Review Committee will apply the following criteria:

1. *Does the structure retain its essential, originally intended character?*
2. *If changes have been made that are inconsistent with the structure's character, have they enhanced the structure?*
3. *Is it structurally sound? A structural report may be required.*
4. *Is it in good repair?*
5. *Are replacements or repair materials compatible with its original style?*
6. *What is the intended use of the structure?*

The Preservation Resource Center strongly discourages the construction of rooftop penthouse additions on historic buildings. The inclusion of such an addition on a building, which is the subject of a proposed easement donation, may be a negative factor in the Preservation Resource Center's consideration of whether to accept an easement donation.



HISTORICAL DOCUMENTATION

In order to justify acceptance of a preservation easement, the Preservation Resource Center requires for its files, a concise statement of the historic, architectural, and/or aesthetic significance of the structure, as well as citations for the resources that were used to compile the history. This may include chain of title owners, uses, and notable occupants, style, architect, craftsman/builder, and contractor.

LEGAL REQUIREMENTS

Legal documentation requirements for the *Act of Donation* are as follows:

1. A form approved by the Preservation Resource Center. A sample/draft can be obtained at the time application is made.
2. Act to be passed by the Preservation Resource Center's attorney
3. Current mortgage and conveyance certificates furnished by applicants attorney
4. Endorsement from applicant's insurance company naming the Preservation Resource Center, as additional insured under applicant's property and general liability insurance.
5. Subordination to the donation from each mortgage holder. A sample/draft can be obtained at the time application is made.
6. Payment by applicant of the resulting attorney's fees and all filing fees incurred

COSTS ASSOCIATED WITH DONATING AN EASEMENT

A. Application Fee - \$1,000.00.

B. Stewardship Fund - The amount of the required donation to the fund varies. It is determined on a case-by-case basis, dependent on a number of factors: the appraised value of the property, the value of the easement donated, comparable easements, anticipated annual monitoring, and enforcement requirements. For commercial property, the complexity of the project is also a consideration.

C. Uncompleted Projects – To insure completion of uncompleted projects, the Preservation Resource Center may require the donor to choose one of the following requirements in any amount acceptable to the Board of Directors: letter of credit, performance bond, proof of financing, or escrow funds.

D. Any and all attorney's costs associated with the donation.

E. Mortgage and Conveyance Certificates and any other associated costs.

We recommend that applicants consult with their attorneys, accountants, or tax advisors to determine if the potential tax benefits of this program meet their personal needs. Neither the Preservation Resource Center, nor its representatives, takes responsibility for the applicant's personal tax consequences from this donation. The value of the donated easement is entirely for the personal determination of the applicant.

If accepted, the Preservation Resource Center will cooperate with the donor in justifying the donation to the Internal Revenue Service. However, the Preservation Resource Center takes no responsibility whatsoever for the valuation of the easement donated, or for the personal income tax consequences to the donor.

ENFORCEMENT OF DONEE'S RIGHTS

The Preservation Resource Center assumes that each donor will abide by his or her obligations set forth in the *Act of Donation of Perpetual Real Rights*. In the event that the donor does not do so, the Preservation Resource Center will seek to enforce its rights as donee through all possible means. If the Preservation Resource Center is required to engage the services of counsel to enforce those rights, the donor is obligated to pay for all attorney's fees and costs incurred by the Preservation Resource Center for the enforcement action(s), whether or not the matter involves litigation.

