



## LANDOWNER PROTECTION STRATEGIES

### *The many ways to leave a legacy*

#### ***Donations of Interests in Land to Conservation Organizations***

##### **A BEQUEST**

This means naming someone in a will. In this case, it's a qualified conservation organization receiving a donation of land (fee title) or a conservation easement. The landowner has unrestricted use of land until death as well as a reduction in estate taxes. The disadvantages are the continued full property tax liability and the loss of income tax benefits for the donation.

**Example:** Jonah includes SILT in his will as a beneficiary of his land or an easement (see below) so that all future farmers on his property will grow food sustainably. *NOTE: If you're planning to leave a land trust in your will, please discuss this with group you name. They will be able to better fulfill your wishes if you talk with them about it first.* SILT is the only land trust in Iowa whose mission is protecting land to grow healthy food. No other organization is required by law to maintain this use in perpetuity for land donated to it, and many institutions have a policy of selling land that is bequeathed to them.

What is a qualified conservation organization? Commonly called a land trust, there are thousands of them with millions of acres under protection.

##### **LAND DONATION**

All rights to the land are transferred to a qualified conservation organization, such as SILT, during the life of the owner resulting in a federal income tax deduction for up to 6 years for the full appraised value of the land, a state tax credit of up to \$100,000 up to 20 years, reduced estate taxes and elimination of property taxes.

**Example:** Marvin wants to sell the family's 300 acres to a developer and retire in comfort. His wife Betty doesn't want the home where she raised her family get bulldozed by the next owner. Selling most of the land will cause the family to incur significant capital gains tax liability. They can donate the farmstead and 40 or so acres to SILT for a next generation food farming family to enjoy, offsetting their capital gains liability at the same time.

**Example:** Janice inherited 100 acres from her parents who bought it after she left for college. The rental income has been nice, but it has always bothered her that it's in conventional production. Donating the land to SILT means she can watch it move into healthy food production, get help dealing with her current tenant and enjoy the celebration around the farm passing to the next generation. She'll feel better about her impact on the environment and she'll be able to factor the 6 to 20-year tax benefits into her financial planning.

### **A RESERVED LIFE ESTATE OR REMAINDER INTEREST**

Property is donated or sold, in whole or in part, to a qualified conservation organization with a deed provision that reserves the right of the owner (and/or specified persons) to use the land or a portion of it, until their death. The owner may claim an income tax deduction for the value of the donation, estate taxes may be reduced, and property taxes are levied only on that portion of the land retained for personal use.

**Example:** Joe and Jane Hansen want to donate their land now in case something unexpected happens, but want to remain on the farm until they retire. Donating their farm with a reserved life estate means they continue to pay taxes, receive rent or CRP payments or simply enjoy it, but SILT holds the deed. The Hansens can tap the state and federal tax benefits they receive from the donation, but the appraised value will likely be lower than an outright fee donation since the land trust won't have access to the land for some time. SILT will also help pair them up with a next generation food farmer if they wish.

### **A LEASEBACK**

Property is donated to a qualified conservation organization, but with the condition that the granting owner leases back use of the land. This type of condition placed on a gift may preclude any tax deduction for the donation. SILT is not currently doing Leasebacks, and is unlikely to do them in the future.

**Example:** Vern wants to donate his land now because it works well with his tax situation, but wants to farm it until he retires. He also wants to maintain ownership of the farmstead, which he will then sell to the next farmer for that farm, giving Vern a nest egg for his retirement. This may not be the highest value donation, but it gives Vern the control he wants over his home and peace of mind that his land will be taken care of when he's gone.

### **DONATION OF CONSERVATION EASEMENT**

An Easement is a legal agreement between a landowner and a land trust or government agency that becomes part of the deed. It permanently limits uses of the land in order to protect its conservation values. With a conservation easement in place, a landowner can realize substantial income and property tax savings (50 to 100 percent deduction of adjusted gross income at the federal level up to 16 years, and up to \$100,000 of state tax credits over 20 years), *while still retaining ownership of the land itself.*

When a landowner transfers selected rights to a qualified conservation organization through a conservation easement, safeguards are established against uses of the land that could damage its ecological, scenic, recreational or natural resource values. The qualified conservation organization then holds these rights, but is prohibited from ever using them and accepts perpetual responsibility for protecting the land. The land trust takes on the responsibility of enforcing the easement through regular visits to the land, and even taking future landowners to court if necessary when they are out of compliance with the easement.

All land trusts in Iowa protect land for its natural, ecological and scenic values. Some *allow* agriculture in their easements but none *require* it, except SILT. Once land is moved out of production under a natural heritage group's easement, it is highly unlikely it will ever go back, because agriculture of any kind is outside their mission. SILT was founded to protect Iowa's working lands *as working lands* because no one else would, and we target farmland that needs to be close to its markets to be profitable and sustainable – land that grows food for human consumption.

**Example:** Janet owns 150 acres currently in corn and bean production. She relies on the income but likes the idea of eco-friendly farming and helping a young market farmer get started someday. She sits down with SILT and works through an easement. Both parties agree that when her current tenant is done farming, SILT will begin enforcing the requirement for sustainable food production, including helping Janet find the right farmer/buyer if she needs it. The value of Janet's land will likely drop due to the restrictions, but that makes it more affordable to the food farmer who buys it and Janet will receive tax benefits that may offset the loss in value by as much as 75 percent.

### ***Sales to Conservation Organizations – (Not available yet to SILT land donors)***

**A MARKET VALUE SALE** realizes the full price for the land for the owner. However, non-profit conservation organizations and protecting government agencies rarely can purchase property at full value for conservation purposes and the seller remains liable for income/capital gains taxes.

**A BARGAIN SALE** realizes less than the full price for the land for the owner. A bargain sale to a qualified conservation organization yields an income tax deduction equal to the difference between the sale price and the full fair market value of the property, and also lowers capital gains taxes.

**LIMITED DEVELOPMENT** provides protection for portions of a property either through a conservation easement, donation or other means, while allowing for development of the remaining property. Limited development arrangements can simultaneously yield tax savings for the donation of the conservation easement and enhance the value of the adjoining land to

be developed. SILT promotes such models in the interest of keeping working food farms close to the communities they serve.

**An OPTION** is a contract between a potential buyer of a property and a seller, which reserves the right of purchase to the buyer for an agreed upon price to be paid in a specified period of time. The buyer secures an option in order to gain time to raise funds for purchase. The option cost is forfeited if no purchase ensues.

**A RIGHT OF FIRST REFUSAL** is a legal agreement granting a potential buyer the right (for a limited time) to match any bona fide offer once a property is placed on the real estate market. Unless protective restrictions exist prior to sale, the purchasing organization assumes the responsibility of defining appropriate uses for the site.

### **Protecting Conditions: Additional Options**

**DEED RESTRICTIONS** can be applied to protect land if no qualified organization is available to hold a conservation easement. Enforcement must be carried out by the owner or the heirs of the owner, leaving little assurance of compliance once the title changes hands. Because no donation is made, no charitable tax deduction results.

**A REVERSIONARY INTEREST CLAUSE** can be included in a deed stating that a title will transfer to a certain named party if deed restrictions are violated.

A group of landowners can limit the future use of their land through imposition of **RESTRICTIVE COVENANTS**, if no qualified organization is available to hold a conservation easement. Neighboring landowners with common conservation goals sign and record this agreement containing protective restrictions. The agreement can be enforced by any of the participating landowners, runs with the land and is binding on future titleholders. These are most common in housing developments.

### **IMPORTANT NOTE TO LANDOWNERS**

The information presented here is not meant as legal or tax advice. SILT encourages all landowners considering a donation of land or an easement to consult their legal, tax and financial advisors with questions about how such a donation can fit into your financial and estate planning.

*Thank you for considering leaving such a legacy to future generations of Iowa food farmers. Please contact us with any questions or concerns as you discuss this important decision with family and friends.*