

# Frequently Asked Questions

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## **1. What are the tax implications for receiving payment for my agricultural easement?**

For tax purposes, funds received for selling an agricultural easement are subject to capital gains tax. A landowner concerned with the issue of capital gains tax should consult an attorney or accountant for tax planning.

## **2. How does an agricultural easement affect property rights?**

By conveying an agricultural easement, a landowner gives up one of the property rights, the right to develop the land for non-agricultural purposes. The landowner continues to hold the remaining property rights of the land, such as the right to possess the property, the right to sell or transfer the property, the right to pass the property to heirs and descendants, the right to receive income and profits from the land, the right to exclude others from the property, and the right to mortgage the property (with limitations).

## **3. How long does an agricultural easement last?**

Ohio law states that agricultural easements purchased with state money through the Clean Ohio AEPP must use "perpetual" easements. A perpetual easement is one that remains with the land forever. If the landowner sells or transfers land on which there is an agricultural easement, the agricultural easement is binding on the new owner as well as on all subsequent owners of the land. There is an extinguishment clause within the deed but the purpose of the agricultural easement is that the land remains in agricultural activity permanently.

## **4. Can improvements be made or other buildings built?**

Generally, minor improvements and changes to the property are permissible. Major changes and construction of new buildings or houses may require permission of the holder of the agricultural easement. The landowner will enter into a Deed of Agricultural Easement, which will address in detail specific improvements or building construction that are permissible, that require permission of the holder, or that are prohibited. A sample of this deed can be found in the appendix.

## **5. What does an agricultural easement do to the landowner's eligibility for other governmental programs?**

For farm program payments and other programs that require active involvement in the operation and risk bearing, the agricultural easement does not affect the landowner or the tenant's eligibility for the program. The state and local holders of the agricultural easement do not actively

participate in the farming operation and do not assume any of the risk associated with the farming operation. Program interests will be subordinate to the Deed of Agricultural Easement.

**6. If I sell an agricultural easement, will I still own my land?**

Yes. A landowner continues to hold the underlying title to the land on which he or she sells an easement. The agricultural easement does not convey title to the land itself; it merely conveys the right to develop the land for non-agricultural uses. The landowner still owns the land and may sell, transfer or bequeath the land.

**7. How will an agricultural easement affect my operation?**

Generally, a landowner may continue to operate the farm in the same manner as prior to the conveyance of the agricultural easement, and may undertake changes in the operation as long as they are not prohibited in the Deed of Agricultural Easement. Major changes in the farm operation, such as an expansion or a new enterprise, may require approval from the holder(s) of the easement.

**8. Will the public have access to my land?**

No. The agricultural easement does not grant public rights of access to the land. The agricultural easement does allow the holder(s) of the easement to enter the property, but only for the purpose of inspecting the land to ensure compliance with the agricultural easement. The holder is encouraged to give advance notice to the landowner prior to inspecting the property.

**9. Will selling an easement affect my ability to borrow money?**

Possibly. Selling an agricultural easement conveys part of the landowner's interest in the land. Although the landowner still holds title to the land, the landowner holds fewer rights in the property, which might reduce the value of the property and the amount of equity available for a loan on the property itself. On the other hand, a landowner who utilizes the payment received for an agricultural easement to improve the farm operation's overall financial condition could enhance the operation's ability to borrow money in the future.

**10. Am I protected from eminent domain?**

No, an agricultural easement does not prevent the use of eminent domain on the property. However, property that is in the Clean Ohio AEPP and the Agricultural District program will be subject to a higher level of scrutiny should there be an attempt to take the land by eminent domain. The director of agriculture is authorized to render an opinion on the effect of the eminent domain action on the agricultural area, and the entity seeking to take the land must consider the director's opinion in its final decision.

**11. Who may grant an agricultural easement?**

The owner of the land may grant an agricultural easement. If more than one individual owns the land, all co-owners must agree to convey the easement. Where land is held by a business entity such as a corporation, the officer authorized in the corporation's articles or bylaws to convey property may grant the agricultural easement.

**12. How does an agricultural easement affect a farm lease?**

A landowner may lease land that is in an agricultural easement. The tenant is subject to the provisions of the agricultural easement, and may not engage in any activities that are contrary to maintaining the land for agricultural purposes.

**13. Can I sell my property once the development rights are purchased?**

Yes, you may sell, trade or gift the land to a new owner after the development rights are purchased. The agricultural easement travels with the land, so the new owner and all subsequent owners must abide by the terms of the Deed of Agricultural Easement.

#### **14. What sources of funding can local applicants use to provide a match?**

The local applicant has a number of sources it can use to provide its portion of the local match. Senate Bill 223, which was signed into law in January 1999, permits local governments (as appropriate) to:

- Levy a property tax, for up to five years with voter approval, for the purpose of acquiring, supervising or enforcing agricultural easements.
- Levy a sales and use tax, with voter approval, to raise revenue to acquire agricultural easements by debt service on bonds issued to finance those purchases, or to supervise or enforce any agricultural easements held by the county.
- Issue revenue bonds and notes for the purpose of acquiring easements, with repayment pledged with sales and use tax revenues. These bonds are exempt from the statutory county debt limits.
- Issue general obligation bonds, with voter approval, for the sole purpose of acquiring agricultural easements. Debt service on the bonds would be financed by the levy of a voter-approved property tax.
- Use money in the General Fund not required by law or charter to be used for other specified purposes to purchase agricultural easements.

The local applicant may also pursue the federal matching program known as the FRPP. This program is available through the USDA, NRCS. In addition, the local applicant may also use private funds to leverage the local match. Any federal or private dollars received by the local government must be deposited into a special fund solely to be used for the purchase of agricultural easements.

#### **15. What is the difference between a conservation and an agricultural easement?**

The Ohio Revised Code 5301.67 defines an "agricultural easement as an: incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

A conservation easement can include agricultural use only to the extent that the agricultural use is consistent with or furthers the purpose of keeping the land in its natural, scenic, open, or wooded condition. The Deed of Agricultural Easement addresses specific uses permitted to retain the use of the land as predominantly agricultural.

#### **16. Who can hold conservation and agricultural easements?**

There is a difference in who can hold each of these easements. An agricultural easement may be granted to the Ohio Department of Agriculture, a municipal corporation, county, township, soil and water conservation district, or a charitable organization. A conservation easement may be granted to the Ohio Department of Natural Resources, a park district, a township park district, a conservancy district, a soil and water conservation district, a county, a township, a municipal corporation, or a charitable organization.

#### **17. Do local governments and charitable organizations incur any legal responsibilities as the local co-holder of an agricultural easement?**

Yes. As with the Ohio Department of Agriculture (ODA), the local sponsor is legally obligated to carry out the terms and conditions of the Deed of Agricultural Easement. These obligations include the creation of the Present Condition Report, conducting an annual monitoring site visit; submitting an annual monitoring report to ODA; working with the landowner to correct any violations of the easement; and enforcing an easement through a court action, with ODA, if necessary. In addition, the local and state co-holders of the easement are not responsible for any landowner or third party liabilities, such as personal injuries, accidents, negligence, environmental

contamination, or other damages, relating to the Protected Property, unless due to the negligence of the co-holders.