

# ***Federal Hot Topics: Amendments & More 2017***

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*CT Model Easement  
is A project of the:*

**CONNECTICUT**  
  
**Land Conservation Council**

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# IRS and Amendment Clauses

- **At Rally 2015, IRS says CEs with amendment clauses may be disqualified for failing perpetuity. Case tactics follow**
- **LTA sees this as trial tactic, not law**
- **Requests IRS clarify and retreat from this position**
- **Alliance recommends land trusts continue established practice to include “well-drafted” amendment provisions**

# CT Model CE Interim Response *(a project of CLCC)*

- Steering Committee not comfortable with blanket recommendation of one approach for all deduction cases
- Amendment Clause removed from body of Model
- Commentary proposes two alternative approaches:
  1. No Amendment Clause
  2. Amendment Clause that includes 7 principles of LTA Amending Conservation Easements Report

# Amendment Principles

An amendment should satisfy *all* of the following:

- 1. **Public Interest and Organizational Mission Test**: Clearly serve the public interest and be consistent with the land trust's mission?
- 2. **Legal Test**: Comply with all applicable federal, state and local laws; Not jeopardize the land trust's tax-exempt charitable status.
- 4. **Financial Test**: Not result in private inurement or confer impermissible private benefit.
- 5. **Conservation Purposes Test**: Be consistent with the conservation purpose(s) and intent of the CE.
- 6. **Existing and Prospective Donor Test**: Be consistent with the documented intent of the donor, grantor and any direct funding source.
- 7. **Conservation Results Tests**: Have a net beneficial or neutral effect on the relevant conservation values protected by the CE.

# CT Attorney General

- CEs are “**charitable trusts**” subject to CT charitable trust law
- CE Amendments with NO CE AMENDMENT CLAUSE categories:
  - **“Low Risk”**
  - **“More Risk”**
  - **“High Risk”**

*See NH AG’s Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements Guidelines for New Hampshire Easement Holders*

# “Low Risk” Amendments

**Clearly comply with 7 principles**

**Ex. Typos,**

**add land or restrictions,**

**eliminate reserved rights,**

**update property description for new survey**

**Action: Notify AG, send copy of recorded amendment**

# “More Risk” Amendments

- **More complicated, some tradeoffs**
- **Clarify ambiguous terms, relocate reserved rights, and new reserved rights as trade off for others, remove useless restrictions with no conservation benefit**
- **May violate IRS “perpetuity” requirement**
- **Action: Submit to AG for review for compliance with 7 principles**
- **AG decides:**
  - low risk= no action letter,
  - recommend changes,
  - if significant issues      probate court

# “High Risk” Amendments

- Do not pass 7 principles
- Ex: extinguishment, complex tradeoffs, releasing restrictions, removing more than *De Minimis* portion of land from CE, allowing prohibited development, in exchange for cash, not consistent with purpose
- Action: AG input, and review and approval of probate court



# CE's with Amendment Clause

- **No AG review of “low risk” and some “more risk” (if complies with 7 principles). Send copy of recorded amendment to AG**
- **High Risk – AG review and where appropriate court review.**
  - Doctrine of Administrative Deviation (modification of administrative terms)
  - Cy Pres (modification of Charitable Purpose)

# New CE Audit Guide

## Dec. 2016

- Confirms required documentation of 8283 form
- Updates related to recent cases
  - Belk case – ability to move boundaries can defeat deductibility
  - Carpenter -Easement can only allow judicial termination
  - Butler -Don't have to record all easement exhibits, depends on state law

# Hot Topics on Form 8283

- Complete 8283 - See instructions
- Supplemental Statement -See instructions
- Qualified Appraisal
- Copy of recorded stamped easement
- Very nice looking and complete baseline signed by both donor & donee
- Complete gift (f8) acknowledgment letter
- Correct mortgage subordination

***Show up front that you have done all the necessary requirements***