

**Conservation or Preservation Restrictions**  
**Modification by Express Provision or Cy Pres**

## Conservation or Preservation Restrictions

### Modification by Express Provision or *Cy Pres*

Land trusts and other entities (collectively "land trusts") often hold title or rights to conservation or preservation restrictions on properties. Connecticut law considers a conservation or preservation restriction acquired or transferred by gift as analogous to a charitable trust and subject to charitable trust principles.<sup>1</sup> In accordance with his duty to protect charitable interests, the Attorney General is a necessary party to judicial actions involving charitable property. In addition, Conn. Gen. Stat. § 47-42c provides that the Attorney General has discretionary authority to enforce the public interest in conservation and preservation restrictions as such interests are defined by Conn. Gen. Stat. § 47-42a. *See Copy of Conn. Gen. Stat. §§ 47-42a – 47-42c attached.*

While perpetual in nature, even well drafted conservation and preservation restrictions may require modification at some point, for example, to clarify terms, add land, improve enforceability, resolve disputes, or address unanticipated land uses. Absent an express provision in the document creating the conservation or preservation restriction that permits the proposed modification, modifications should be proposed only when there has been a change in circumstances unanticipated by the grantor or the land trust at the time the conservation or preservation restriction was created.

Generally, conservation and preservation restrictions cannot be modified unless an express provision in the deed or other document creating the restriction permits modification. In the absence of such an express provision, a land trust, in consultation with the Attorney General's Office, can seek modification from a court under the principles of the *cy pres* doctrine.

To invoke the doctrine of *cy pres*, a court must first find that, due to changed circumstances, it has become impossible or impracticable to continue or to enforce the conservation or preservation restriction in the manner intended by the grantor. Second, the court must approve a new provision that as nearly as possible preserves the grantor's original intent in accordance with originally intended conservation values. The court may evaluate and find that a proposal offered by the petitioner meets that standard, or the court may fashion an alternate proposal that it finds more nearly preserves the original conservation values.

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<sup>1</sup> *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*, 243 Conn. 1 (1997).

The samples and procedures provided in this package are drawn from court-approved modifications that were unopposed, consistent with originally intended conservation values, and drafted in collaboration with the Attorney General's Office.

The Attorney General's Office encourages land trusts and other parties with questions or concerns about modifications to conservation or preservation restrictions to consult with us. We can be contacted at (860) 808-5020.

## **Procedure for Undisputed Matters**

### **Timeline**

- Submit proposal to AGO for review (allow 4-6 weeks)
- Land Trust/Title/Easement Holder Files Complaint for Cy Pres naming AG as Defendant
- File Joint Statement of Facts and Affidavits in Support of
- File Proposed Order and Finding of Facts with Court
- AGO files Answer to Complaint
- AGO files Memo in Support of Proposed Order and Findings of Fact
- Close Pleadings
- Hearing

The Attorney General cannot provide legal or tax advice to private parties or warrant that a proposed amendment will satisfy (or not be in violation of) the requirements under federal tax law. Holders should consult with competent legal counsel regarding the federal tax law ramifications of a proposed amendment, including possible loss of tax-exempt status or status as an eligible donee of tax-deductible conservation easements.