

**Title 13. Libraries, Archives, and Cultural Resources**

**Chapter III. Arkansas Historic Preservation Program, Division of Arkansas Heritage, Department of Parks, Heritage, and Tourism**

**Subchapter A. Generally**

**Part 15. Arkansas Historic Preservation Program Conservation Easements**

**Subpart 1. Generally**

**13 CAR § 15-101. Conservation easements generally.**

(a) Conservation easements provide for a significant contribution to Arkansas's past and future and are a means for keeping property in private hands while:

- (1) Serving the public interest; and
- (2) Ensuring the preservation of valuable:
  - (A) Structures;
  - (B) Land areas; and
  - (C) Natural resources.

(b) In Arkansas, conservation easements are created pursuant to Acts 1983, No. 567, Arkansas Statutes § 50-1201 et seq.

(c) The act defines a conservation easement as a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include:

- (1) Retaining or protecting natural, scenic, or open-space values of real property;
- (2) Assuring its availability for agricultural, forest, recreational, or open-space use;
- (3) Protecting natural resources;
- (4) Maintaining or enhancing air or water quality; or
- (5) Preserving the historical, architectural, archeological, or cultural aspects of the property.

**Authority.** Arkansas Code § 13-7-104.

**Codification Notes.** Acts 1983, No. 567, is codified at Arkansas Code § 15-20-401 et seq.

**13 CAR § 15-102. Certified historic structure.**

(a)(1) The Arkansas Historic Preservation Program is authorized by Acts 1977, No. 480, as amended by Acts 1983, No. 663, to accept conservation easements.

(2) It is the policy of the program to accept easements only on certified historic structures, or properties or sites listed in the National Register of Historic Places.

(b) A "certified historic structure" is a structure that is:

- (1) Individually listed in the National Register of Historic Places; or
- (2) Located within the National Register Historic District and certified by the United States Secretary of the Interior as contributing to that district.

**Authority.** Arkansas Code § 13-7-104.

**13 CAR § 15-103. Procedure.**

The procedure for granting a conservation easement to the Arkansas Historic Preservation Program is as follows:

(1)(A) The grantor determines the National Register of Historic Places status of the:

- (i) Structure;
- (ii) Property; or
- (iii) Site.

(B) The Federal Register or the program may be consulted to determine if a property or district is listed on the National Register of Historic Places.

(C)(i) A structure that is individually listed on the National Register of Historic Places is:

- (a) Automatically considered a certified historic structure; and

(b) Eligible for donation of a conservation easement to the program.

(ii) If the State Historic Preservation Officer determines that a structure, property, or site has suffered loss of integrity, its National Register of Historic Places status must be reconsidered.

(D)(i) A structure that is located within a National Register Historic District must be certified as contributing to that district to be eligible for the donation of a conservation easement to the program.

(ii) In this regard, Part 1 of the Historic Preservation Certification Application must be completed.

(iii) The application:

(a) May be obtained from the program; and

(b) Once completed, must be submitted to the program for review and submission to the regional office of the National Park Service for an official determination.

(iv) Once the National Park Service has made a determination that the structure contributes to the significance of the district, it is:

(a) Considered a certified historic structure; and

(b) Eligible for the donation of a conservation easement to the program.

(v) The certification process takes approximately two and one-half (2 1/2) to three (3) months.

(E)(i) A structure not located within a National Register Historic District and not individually listed in the National Register of Historic Places must obtain a preliminary certification of significance before an easement will be accepted by the program.

(ii) In this regard, Part 1 of the Historic Preservation Certification Application must be completed to request that the United States Secretary of the Interior make a determination that the property:

(a) Meets National Register of Historic Places criteria; and

(b) Is likely to be listed in the National Register of Historic Places.

(iii) Once again, the application must be submitted to the program for review and submission to the regional office of the National Park Service for an official determination.

(iv) Once the National Park Service has issued a preliminary certification of significance, the property will be considered eligible for donation of a conservation easement.

(v) However, to qualify for a charitable contribution deduction under federal tax law, the structure must be a certified historic structure (actually listed in the National Register of Historic Places) at the:

(a) Time the easement is granted; or

(b) Extended due date of the grantor's tax return;

(2) The grantor determines what will be included in the conservation easement, e.g., interior/exterior easement, height restriction, adjacent land area, etc.;

(3)(A) The grantor completes the sample conservation easement form and submits it to the program for review.

(B) Appropriate photographs and description must be attached;

(4)(A) The grantor executes the final document and submits it to the program for execution by the Director of the Division of Arkansas Heritage.

(B) Once executed by the director, the document will be returned to the grantor for filing.

(C) The document should be filed with the circuit clerk of the county in which the property is located.

(D) The grantor is responsible for filing and sending a file-marked original to the program;

(5)(A) The completed easement document must be received by this office no later than December 15 of the year for which the tax deduction is to be taken.

(B)(i) Please note that Part 1 of the Historic Preservation Certification Application for a structure located within a National Register Historic District must be certified by this date so that it can be included in the easement documents.

(ii) See subdivision (1)(D) of this section above;

(6)(A) Annual inspection visits will be made to said property to document its state of preservation.

(B) The owner will be notified in advance if possible; and

(7)(A) The owner will be notified within two (2) weeks of the results of the inspection.

(B) If the property is found to be out of compliance with the specifications of the easement document, the owner will be instructed to begin necessary repair work within six (6) months of the date of the notice.

(C) If after six (6) months the owner has made no good faith effort to begin repairs, he or she will receive a second notification in the form of a warning giving him or her another six (6) months to complete the necessary repairs.

(D) If no substantive progress toward compliance is made by the end of the second six (6) months, the owner is subject to possible legal action.

**Authority.** Arkansas Code § 13-7-104.

**13 CAR § 15-104. Charitable contribution deduction allowed.**

(a) The owner may take a charitable contribution deduction for the donation of a conservation easement of a certified historic structure.

(b) The deduction is valued as the difference between the fair market value of the property before contribution of the easement and the value of the property after the donation of the easement.

(c) This type of deduction often results in a significant tax savings for the grantor.

(d) However, the acceptance of a conservation easement by the Arkansas Historic Preservation Program does not per se guarantee that the necessary requirements are met for qualifications for a charitable contribution deduction pursuant to 26 U.S.C. § 170.

(e) Due to the complexity of the tax law and property title consequences of conservation easements, an attorney should be consulted before entering into this type of transaction.

**Authority.** Arkansas Code § 13-7-104.

**13 CAR § 15-105. Attachments to this part.**

(a) Attached are:

- (1) A sample conservation easement and subordination of mortgage;
- (2) Part 1 of the Historic Preservation Application;
- (3) A publication entitled "How To Qualify Historic Properties Under The New Federal Law Affecting Easements"; and
- (4) United States Department of the Treasury regulations pertaining to conservation easements.

(b) Please contact the Arkansas Historic Preservation Program at (501) 324-9150 to begin the procedure for granting a conservation easement.

**Authority.** Arkansas Code § 13-7-104.

**Codification Notes.** Pursuant to Arkansas Code §§ 25-15-218 and 1-2-303, the attachments referenced in subsection (a) have been omitted from the Code of Arkansas Rules.