

In spring of 2021, the Commission released an updated version of the *Requirements Manual* and a document outlining the changes. Some of the changes begin to take effect in 2022. Each month we will be highlighting a change, why we made it and why it is important. This month we're looking at a new transaction requirement.



III.2. Tax-deductible conservation easements also include the following consistent with the Treasury Department regulations and Tax Court decisions:

e. Extinguishment provisions that require:

- i. Grantee be entitled to at least the proportionate value<sup>2</sup> of the conservation easement at the time of the gift  
(<sup>2</sup>Must not subtract a) the value of permitted improvements since the time of the gift or b) the satisfaction of any and all prior claims) Starting in 2022



### Why is it important?

Land trusts have a responsibility to review, on their own behalf,

each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations. Part of this review includes considering whether the easement document contains elements that would place a landowner at risk of being denied a deduction, which could impact the reputation of the land trust and the larger land trust community.

### How will it be implemented?

The Commission will look that tax-deductible conservation easements completed in 2022 and later meet the requirement. Corrective action will not be required for older conservation easements.

### Why add this requirement?

The Treasury Department regulations require that tax-deductible easements include provisions to address extinguishment of easements and how the easement allocates any possible extinguishment awards ("proceeds") between the landowner and the land trust using the method set in the "proceeds clause." A recent Tax Court ruling disallowed a deduction because the easement failed to satisfy the 'protected in perpetuity' requirement because it included the language: "minus any increase in value after the date of this Conservation Easement attributable to improvements" and "after the satisfaction of any and all prior claims." A conservation easement must absolutely guarantee that the land trust receive its proportionate share of the extinguishment proceeds. The Land Trust Alliance revised its guidance to land trusts to reflect that ruling.

For more information, see the Land Trust Alliance's [Pointers for Drafting the Proceeds Clause in Conservation Easements](#). To view this link, please login to the Alliance's The Learning Center.

If you have questions about any of the changes, please contact us at [info@landtrustaccreditation.org](mailto:info@landtrustaccreditation.org)

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[Click here to see the entire Summary of Changes and to download the Requirements Manual.](#)