



Practical Pointers Series

Form 8283

IRS Form 8283 is required for all non-cash contributions valued at greater than \$5,000. While the land trust's signature on Form 8283 does not represent agreement with the claimed value, *the IRS has asked that land trusts use common sense* in questioning appraisals that seem inflated and that land trusts help landowners' *do the right thing*.

Suggested Attachments to Form 8283

The IRS recommends that landowners attach the following *fully and correctly completed* substantiation documents to *all correctly completed* Form 8283 filings:

1. Correct Supplemental Statement (See instructions)
2. Qualified Appraisal for every easement
3. Copy of recorded Easement
4. Compelling and complete Baseline
5. Contemporaneous written acknowledgement (cwa gift letter)
6. Correct Mortgage Subordination

By including all documents on the IRS checklist, the IRS agent is more likely to put the file in the 'out' box as not worth further inquiry. This assumes that every document is correctly prepared. While donors are legally responsible for substantiating donations, land trusts may assist donors. Recent court decisions highlight the importance of land trusts helping donors understand the law, without giving legal advice.

Additional Details

1. **Form 8283 must be signed by the individual appraiser**, not just the appraiser's firm in order to have a responsible person for any false or fraudulent overstatement in the appraisal.
2. A sufficiently detailed "supplemental statement" may be many pages. Revenue agents may never have seen a conservation easement. Make their job and your experience easier by providing more *correct and complete* information early. Landowners have years to know their property; a detailed statement can help a revenue agent understand its value too.
3. IRS officials emphasize that a property address is not an adequate "description of donated property".
4. **Form 8283 is not a contemporaneous written acknowledgement substantiation letter.** That letter must be separate, contemporaneous and have goods and services language.

General Guidelines for Land Trusts

1. **Early Warning System.** Following the advice of Standard 10, Practice B, explain early in the process, preferably in writing, that if the land trust believes that the donation does not conform to tax laws, it may refuse to sign the Form 8283.
2. **Confidentiality Agreements.** The confidential economic information of the value of land is a very private issue for some donors and it may become common for the representatives of landowners to ask the land trust to sign a confidentiality agreement.

3. **Three Tier System of Appraisal Review.** To avoid feeling the necessity to comment on the specifics of an appraisal, think about the appraisal review as a three-tier system:
 - a. Generally in line with the expected value and is not missing any essential elements: Form 8283 may be signed by the land trust without reservation.
 - b. Aggressive in its conclusion of value and/or missing a key element: the land trust might sign Form 8283 but the IRS would expect it to share its concerns regarding the appraisal in writing with the donor. Remember that this writing is discoverable.
 - c. Indefensible as to its conclusion of value in light of local land values, or the land trust believes no gift has been made, or the gift described in the appraisal is not the gift received, or an appraisal that is, or borders on being, fraudulent: may refuse to sign the Form 8283.
4. **Avoid Being an Editor.** Do not edit the appraisal; that may create the impression that if the appraiser makes all of the changes requested by the land trust, then the land trust has approved the appraisal and therefore the appraisal should be valid and accurate. Any written comments should be cautionary or direct landowners or their appraisers to an issue for them to resolve, and should include the caveat that the donor must rely on his or her advisors, and not rely on the land trust regarding these matters.
5. **Avoid Giving Advice.** The land trust should refrain from making statements that appear to be advice; instead suggest that the donor and advisors review the Code and Regulations regarding appraisal requirements or additional justification of values, comparables, assumptions or methodology. A land trust may also wish to refrain from writing an opinion about an appraisal which creates evidence that the IRS can obtain in the event of an audit or trial. The land trust should have a written policy to guide decisions and actions regarding signing the Form 8283 and sending cautionary letters.
6. **Explain any Decision to not Sign.** If the land trust and its advisors determine that the land trust cannot sign Form 8283 (it did not receive a gift, the gift received is not described accurately or the value is so overstated as to be fraudulent) then the land trust and its attorney would write a letter clearly explaining why it cannot sign.

RESOURCES

- Internal Revenue Code § 170 and Treas. Reg. § 1.170A-13.
- *Schrimsher v. Commissioner*, TC Memo. 2011-71.
- Rally 2009 and 2010 Summaries of IRS Panel Questions & Answers
- IRS Form 8283 and Instructions to IRS Form 8283.
- Land Trust Alliance policy pages <http://www.landtrustalliance.org/policy/tax-matters/conservation-donation-rules>
- *Practical Guidance for Dealing with IRS Form 8283 Issues*. Larry Kueter and Mark Weston, 2005 Rally Presentation
- *Tax Benefits and Appraisals of Conservation Projects*, 2007 Larry Kueter and Mark Weston, (S. Bates ed.)
<http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c..>

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