

Components of a Trust cultural heritage easement agreement

Heritage conservation easement agreements are flexible conservation tools authorized for use by the Ontario Heritage Trust under the [Ontario Heritage Act, section 10. \(1\)\(c\)](#) to protect properties of historical, architectural, archaeological, recreational, esthetic, natural and scenic interest. Every agreement is customized to the needs, circumstances and heritage values that are unique to each property. Easement agreements are negotiated between the owner and Trust staff and are entered into voluntarily by both parties.

Parties

There are always at least two parties to an easement agreement:

1. The Trust – the holder of the easement
2. The owner – also known as the donor of the easement agreement

In order for the Trust to enter into an easement agreement, the owner must submit a request in writing to the Trust. The Trust's Board of Directors must subsequently pass a motion supporting this request.

Legal description

An easement agreement must relate to a specific property, portion of a property or a set of properties. The agreement is registered on title in priority and binds current and future owners of the property. Any legal description must be registerable. Typically, this means that there is a survey or reference plan/R-Plan (a graphical representation of descriptions of land, deposited in the local Land Registry Office) that defines the geographical boundaries and dimensions of the property.

Purpose

The purpose of a Trust conservation easement is to protect and conserve the natural and/or cultural heritage values and features identified in the agreement and located on the property.



Interior, St. Brigid's Church, Ottawa

Definitions and terms

All of the key terms used in the document are defined in order to bring maximum clarity on use and interpretation.

Description of heritage value and features

In order for the Trust to authorize the establishment of an easement, it must be demonstrated that there is a provincial heritage interest in doing so. Typically, this means that there are cultural or natural heritage values or interest of provincial significance as defined by [Ontario Regulation 10/06](#).



Peacock House, The Briars, Georgina

Covenants and approvals

An easement agreement establishes an approval process between the owner and the Trust. In order to safeguard a heritage property against the destruction of heritage value and/or features, the easement includes a series of covenants that require the owner to obtain the written approval of the Trust in order to undertake a range of actions and activities. These may include: site alteration, severance/subdivision, excavation, planting/removal of trees or other vegetation, the use of pesticides, construction and demolition. An easement agreement also includes positive obligations to safeguard proactively and care for the heritage features. This may include building maintenance, prudent stewardship and requirements for insurance. The covenants included in an easement will vary depending on the nature of the heritage features.

Standards and guidelines

All decisions made by the Trust under the easement agreement are made based on sound internationally recognized conservation principles. With respect to easements protecting cultural

heritage properties, these are the [Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada](#).

Use and other reserved rights

Typically, an owner may use a property as they see fit, provided that the use is consistent with the obligations under the easement. Moreover, the owner may preapprove major projects or plans as part of the agreement, provided that these are deemed to be consistent with good conservation practices and the heritage value of the property.

Inspection and access

In order to uphold and administer an easement agreement, the Trust requires legal access to a property and, more specifically, the heritage features for the purpose of inspection. Trust staff communicates with the owners and will inspect easement properties on a regularly scheduled basis. Access is also required for the purpose of onsite remediation, should this ever become necessary.

Remedies of the Trust

Should the owner default on his/her easement obligations – including undertaking activities and alterations without the approval of the Trust or failing to meet obligations such as maintenance, insurance or access – the Trust may use its remedies to rectify the default. These remedies include: injunctive relief, the right to enter on the property and undertake repairs, alterations and maintenance, and the right to recover the costs of remediation from the owner in a court of law.

Authorization

An easement agreement is executed by the parties. This includes, at a minimum, the registered owner of a property and the Ontario Heritage Trust.

Baseline Documentation Report (BDR)

The condition of the easement property at, or shortly after, execution of the agreement is recorded in a detailed report known as a Baseline Documentation Report or BDR. This report is prepared by the Trust and the veracity of its content is approved by the Trust and the owner.

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