

HISTORIC PRESERVATION EASEMENTS

A historic preservation easement, also called a preservation covenant, is a voluntary legal agreement that can be used to protect the historical, architectural, archaeological, or cultural aspects of historic properties, either permanently or for a number of years.³⁷ A preservation easement typically prohibits the property owner from demolishing or making alterations that would be inconsistent with the historic character of the property and often requires advanced approval of the easement holder before certain alterations are made. An easement, depending on how it is structured, can also protect against deterioration of the structure by imposing maintenance obligations.



The Oddfellows Building, Atlanta

BY WARREN LEMAY

A preservation easement is a flexible tool that can be crafted in a number of different ways to address the unique interests of the parties and characteristics of the property. For example, an easement may restrict changes to the entire property or just a portion of the premises, such as a particular structure or only the exterior front of a building.

A preservation easement gives a designated third party the right to monitor and enforce the easement. This third party is called the easement holder and is typically an organization with a mission of historic preservation or conservation, such as a governmental historical preservation entity, charitable organization, or trust. For an easement to be effective, the easement holder should have the resources and commitment to be a long-term steward in monitoring and enforcing the restrictions contained in the easement. The Texas Historical Commission is the holder of multiple preservation easements in Texas.

Preservation easements require the consent of the current owner but, once created, also bind the future owners of the property. Preservation easements are recorded with the deed records of the county where the property is located and become part of the chain of title. In this way, preservation easements can provide protection in perpetuity.

When creating an easement, a best practice is to retain an attorney who specializes in historic preservation law as well as an accountant to assist with the process. The Texas Historical Commission may be able to assist as well. The National Trust for Historic Preservation can provide a sample preservation easement upon request by contacting law@savingplaces.org.

In some instances, a preservation easement may provide important federal tax benefits, depending on the change in property value resulting from the easement. Contact a tax advisor for more information. The Texas Historical Commission does not accept donations of easements for tax purposes.

Examples

Preservation easements are in place on thousands of historic properties across the United States, including a number of properties with ties to African American heritage, including:

- **The Joshua Houston, Jr. House, Huntsville, Texas:** The home was constructed in 1898 by Joshua Houston, a member of one of Huntsville's most prominent African American families. In 2003, the owner of the house granted a preservation easement to the Walker County Heritage Foundation, which sponsored restoration of the house. In addition to restricting redevelopment, the easement requires that the house be made available to the public for at least 12 days each year.
- **Nina Simone Childhood Home, Tryon, North Carolina:** In 2020, the owners of Nina Simone's childhood home granted a preservation easement to Preservation North Carolina. The easement allows for rehabilitation of the home as long as the home's historic character is maintained.
- **The Oddfellows Building, Atlanta, Georgia:** This building is located in what was once the hub of African American commercial life in Atlanta. Easements Atlanta, a 501(c)(3) nonprofit organization with a mission of accepting historic preservation easements of certified historic properties in Atlanta, holds a preservation easement on a portion of the complex.