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Loophole Pays Off on Upscale Buildings

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Two years ago, after leaving her job as Vice President Cheney's spokeswoman to join a lobbying firm, Juleanna Glover Weiss bought a new house. Weiss and her husband, lobbyist Jeffrey Weiss, settled on a century-old, 10-bedroom home sandwiched between foreign embassies in Kalorama. Today it is one of the most prominent party venues in Washington.

The Georgian-style mansion came with 11-foot ceilings, vintage chandeliers, inlaid hardwood floors -- and a $1.5 million price tag.

After closing on the house, the Weisses signed papers promising that they would not alter its outward appearance without first obtaining permission. They "donated" that pledge, known as a historic facade easement, to a nonprofit preservation trust. That allowed the Weisses to seek a federal income tax write-off for the estimated cash value of the gift.

Easement donors in D.C. usually write off about 11 percent of the value of their homes. That means owners of a $1.5 million mansion can claim tax breaks of $165,000 or more.

Such tax deductions are increasingly common although the District already bars unapproved and historically inaccurate changes in the facades of homes in the city's many historic districts. As a result, easement donors largely are agreeing not to change something that they cannot change anyway.

"It really is money from the taxpayer for nothing," said lawyer John D. Echeverria, director of the Georgetown Environmental Law and Policy Institute. "People are absolutely delighted -- and astounded -- that the federal government would send them $50,000 and more for doing nothing."

The Weisses are among hundreds of affluent Washingtonians who have taken part in the once obscure but rapidly growing program, created by Congress 28 years ago with the goal of preventing developers from ravaging historic streetscapes across the nation.

Before they bought their home, the Weisses already were well acquainted with the facade program. Records show that in 2000 they donated an easement on their previous home, which they purchased for $480,000.

Glover Weiss declined to comment, other than to say, "Washington is a beautiful, historic town, and I would like very much to have it remain that way for my children and grandchildren."

The tax deductions are supposed to represent the decrease in value of the property caused by the easement restrictions. Increasingly, though, the easements have become a way for owners of expensive houses to reap a windfall.

An analysis by The Washington Post of federal and local government data identified about 900 residential facade easements in Washington covering a total of 1,400 homes and condo units. Nationwide, the number of easement donations has been increasing rapidly, hitting about 700 last year.

Today, the average assessed value of residential structures covered by facade easements in the District is more than $1 million, the analysis showed.

The homes tend to be clustered in affluent neighborhoods in Capitol Hill, Dupont Circle and Georgetown. Most display brass plaques, many of them round and bearing a star, identifying the trust that holds the easement.

Homes enrolled in the program need not be architecturally striking. The houses also need not be especially antique -- homes built as recently as 1950 may qualify. And many preservationists say the easements may increase a building's value -- making the tax breaks unwarranted.

"They are giving up absolutely nothing," said former Treasury official Daniel Halperin, now a nonprofit tax specialist at Harvard Law School. J. Peter Byrne, a historic preservation specialist at Georgetown University Law Center, called the donations "bogus gifts" that have been supplying homeowners with "free money."

The increase in easements has been driven by the emergence of for-profit "facilitators" -- businesses that market the program and process the paperwork for homeowners, making the procedure quick and painless. In recent years, such companies and the nonprofit preservation groups that hold the easements have taken in millions of dollars for processing paperwork and monitoring the easements.

All those payments are underwritten by the tax breaks.

"Taxpayers are taking improperly large deductions for facade easements," Steven T. Miller, commissioner of the tax-exempt entities division of the Internal Revenue Service, warned appraisers meeting Oct. 22 in Washington. "The taxpayer can't give up a right to change the facade of a building if he or she doesn't hold that right in the first place."

'Perfectly Legitimate'

The rich, the famous and the merely well-to-do are joining the program in swelling numbers. Easement donors in recent years have included Sen. Christopher J. Dodd (D-Conn.), Sen. Kent Conrad (D-N.D.), film producer Sidney Ganis, Public Citizen President Joan Claybrook, National Public Radio host Steve Inskeep and New Yorker magazine investigative reporter Seymour Hersh.

"In my neighborhood, almost everybody has one," Hersh said. "If I remember, there was much hooting at us for *not* doing it."

Although public records do not establish whether donors actually took a deduction, tax specialists said it would be unusual to forgo the benefits. All donors who agreed to be interviewed acknowledged taking the tax breaks or planning to take them soon.

The exception was Dodd, who with his wife owns a three-story brick townhouse on Capitol Hill, assessed at more than $700,000. Dodd planned to take the deduction this tax season but is rethinking that decision after being contacted by The Post.

"We were using the best guidance of attorneys and accountants," said Jackie Clegg, Dodd's wife and a former vice chairman of the U.S. Export-Import Bank. "We'll reconsider and do the most appropriate thing."

Officials at nonprofit preservation groups contend that the easements serve a valuable purpose. Some are donated in areas where preservation laws are nonexistent or weak and enforcement spotty, the officials said. In cities with strict laws and enforcement, such as Washington and New York, easements act as an insurance policy, in case ordinances change or authorities fail to enforce existing law.

Not all the donations are identical. Some easements go beyond local ordinances by restricting changes to interior spaces and barring development on adjacent land. The easements also often restrict changes in subtle details, such as exterior paint colors, that are unaddressed or laxly enforced by local authorities.

"This is a perfectly legitimate program," said James M. Kearns, president of the National Architectural Trust, the nation's fastest-growing easement organization. "We are doing historic preservation and doing it extremely well, in my opinion."

Nonetheless, some homeowners who have profited from the program describe the tax write-offs as a waste of government funds. They asked not to be identified, for fear of attracting an IRS audit.

One homeowner, who is claiming a six-figure write-off for his Capitol Hill townhouse, described the program as "a boondoggle." Another, who is claiming a similar-size tax break on his Logan Circle home, said he had difficulty understanding why the "stupid" program exists.

"I was giving up nothing and getting a considerable amount of money in return," the homeowner said. "The government shouldn't allow it."

Last year, The Post began publishing articles examining tax deductions taken for donations of conservation easements -- deed restrictions added to land to preserve scenic vistas and wildlife habitat. The articles sparked investigations by the IRS and the Senate Finance Committee. More recently, their attention has turned to facade easements.

"The facade tax break itself makes it too easy for people to take a big tax deduction they don't deserve," Finance Committee Chairman Charles E. Grassley (R-Iowa) said in a statement to The Post. "I intend to take strong steps in the next Congress to end the abuses."

Also serving on the Finance Committee is Conrad, who lives nine blocks from the U.S. Capitol in a 96-year-old red brick house assessed at $597,000. In December 2000, Conrad donated a facade easement on his four-bedroom home to a trust in the District, property records show.

Conrad said through his spokesman, Chris Thorne, that although he could not recall exact figures, he believed his easement was appraised at 10 percent of the value of his townhouse at the time. After he was told of The Post's findings, Conrad said he believes the Senate should consider lowering the percentage donors may claim, perhaps to 5 percent. In view of the federal budget deficit, he said, lawmakers also should consider capping the amount that donors may deduct.

"The senator continues to believe there is strong support across the country for preserving historic properties, but it needs to be reformed," Thorne said.

Conrad is among many high-profile figures whose donations have helped make Washington the nation's leading city for such easements. At The Post, participants include Book World Editor Marie Arana and her husband, Pulitzer Prize-winning book critic Jonathan Yardley.

"In D.C., virtually the Who's Who has done this," real estate appraiser James D. Donnelly said. "Their lawyers and accountants are all looking at this, and they are all saying 'My goodness, it is for real.' "

There is no comprehensive list of homes with easements. But The Post's study shows that Capitol Hill has about 340, followed by Dupont Circle (290), Georgetown (250) and Cleveland Park (90).

Hersh, a Pulitzer Prize winner best known for his reporting on the My Lai massacre and the Abu Ghraib prison abuse scandal, said he donated an easement three years ago. He called the restrictions a "minimal intrusion" that did not affect how he used his Cleveland Park house, built in 1910 and assessed this year at $985,000.

Hersh said he made the donation primarily for the tax write-offs. There was "nothing illegal" about the deduction, Hersh stressed, or his accountant would have waved him off -- particularly given that he was audited repeatedly during the Nixon administration. Hersh said he could not recall how much he saved but described it as "a nice benefit to have."

"Of course," he added, "it isn't helping the Treasury."

Ganis, who splits his time between Hollywood and his native New York, said he donated an easement on his circa 1825 Federalist townhouse in west Greenwich Village. Ganis has worked as a senior executive at Sony, Columbia and Paramount Pictures, and has produced such films as the Adam Sandler vehicles "Mr. Deeds" and "Big Daddy."

Even though Ganis said his easement is no more restrictive than local New York preservation ordinances, "we get a nice, healthy tax deduction."

"It really is a good business decision," he said. "There aren't that many good, solid tax incentives these days, and this happened to be one of them. Lucky for us."

'It's a Paper Concept'

The tax breaks are available to owners of residential and commercial structures in designated historic districts or individually listed on the National Register of Historic Places.

The owner must find a nonprofit organization willing to accept the easement as a charitable donation. The nonprofit becomes responsible for monitoring the facade, approving changes and suing if it finds violations. The easements are attached to property deeds and remain there in perpetuity.

Property owners who live in historic districts generally begin the donation process by asking the National Park Service to certify their buildings as historic. Since 1996, the Park Service has received 1,632 such applications nationwide, according to federal data analyzed by The Post. All but eight requests were granted.

Although national in scope, the 28-year-old program first found traction in Washington, where preservationists mobilized in the late 1970s to protect the capital's rich architectural history.

One of the first local nonprofits to accept facade donations was the Foundation for the Preservation of

Historic Georgetown, whose directors have included such prominent figures as former secretary of state Dean Acheson, former White House counsel C. Boyden Gray and Carolyn A. Fortas, wife of former Supreme Court justice Abe Fortas.

Following the Georgetown group into the business were the L'Enfant Trust, in 1978, and the Preservation Trust, in 1980. The organizations charged each donor a fee, which they described as a charitable contribution. The money was meant to establish endowments and underwrite the cost of annual facade inspections.

Beginning in 1998, facade easement donations increased dramatically. That surge coincided with the rise of for-profit facilitators, such as the Capitol Preservation Alliance. In Washington, the facilitators found lots of opportunity: 25 residential historic districts encompassing about 23,500 structures and 17 percent of the city's land area.

The program has proved popular because it provides money to everyone involved -- the facilitators, the nonprofits that accept the donations and the homeowners.

The size of the tax deduction is determined by appraisers who estimate how much the property value has dropped because of the easement restrictions. Owners generally may write off the value of their donation over as many as six years, offsetting as much as 30 percent of their annual income.

Homeowners typically claim tax deductions of 10 to 15 percent of their home's value, according to preservationists. Until earlier this year, an IRS guide suggested that easement valuations "should" fall in that range.

In Washington, easement promoter Tim Maywalt said, "I have never seen an appraisal come in at anything but 11 percent -- and I have seen 350 appraisals."

Maywalt and other easement promoters said courts in the late 1980s confirmed that such large write-offs are permissible. "That's just as crystal clear as can be," said Kearns, of the National Architectural Trust.

Some analysts, however, described the court rulings as contradictory, narrow and dated.

In one U.S. Tax Court case often cited as authorizing today's large deductions, the judges' ruling specifically warned donors that they were not automatically entitled to substantial write-offs.

"By this decision we do not mean to imply that a general '10-percent rule' has been established with respect to facade donations," the judges wrote in the 1988 case, *Nicoladis v. Commissioner of Internal Revenue*. "Valuation itself is still a question of facts and circumstances."

Halperin, the former Treasury official now teaching at Harvard, described the large tax breaks routinely taken today as "just crazy." He estimated the true value of the average donation as "pretty close to zero."

In fact, in pitches to prospective clients, some promoters of the tax deductions have undercut the argument supporting the large write-offs by stressing that the easements add few meaningful restrictions that would decrease market value. Those promoters include Maywalt, a contractor for the Washington-based Capitol Preservation Alliance.

At a seminar in January of this year in Washington, Maywalt emphasized in a talk to prospective donors that "prior approval of facade changes are already restricted in exactly the same way by the city's historic preservation review board." A tape recording of Maywalt's talk was provided to The Post by a participant.

The only difference, he said, is that the easements allow the trusts to review color changes and prohibit homeowners from allowing their houses to "fall down" from neglect.

Maywalt also told the property owners they would receive tax breaks for a drop in their property values but stressed that there would be no actual decline.

"It's a paper concept," he stressed on the tape recording. "The reality of it is that the property is going to continue to accrue in value. . . . Properties with easements have turned over one, two, three, four, five times. We have not seen any decrease in value."

Tom Branham, chief tax assessor for Washington, said his office has searched in vain for evidence of lost value, to determine whether property taxes should be reduced for the donors.

"We don't see any difference in value here between the homes that have the facade easements and the ones that don't," Branham said.

Writing last year in the Journal of Financial Planning, Steven McClain, co-founder of the National Architectural Trust, asserted that "the presence or absence of an easement is only a minor factor in the buying decisions of future purchasers."

Interviews with donors show the vast majority have no interest in altering the look of their homes, even if they could.

"I can't imagine anybody who would ever want this house would ever want to alter the facade," said Paul Sherrill, who donated an easement on the brick and limestone exterior of his Georgian Revival townhouse, off Dupont Circle. The home, assessed at $1.1 million, was featured in an eight-page photo spread in the September issue of Architectural Digest.

Some preservationists argue that the easements *increase* property values, by making neighborhoods well preserved and even more exclusive.

"The property generally becomes more valuable with the easement because buyers place a premium on the architectural integrity of all such properties in the community," Maywalt wrote in January in a Washington-based newsletter for financial planners.

The fact that easements are lucrative and painless puzzles potential donors. Kearns wrote recently in a newsletter for accountants that homeowners' initial reaction to the program was skepticism, "because the opportunity sounds 'too good to be true.' "

Kearns said in an interview that he knew of one easement that recently was valued at $1 million. In another recent case, he said, an easement on a New York commercial building was valued at $150 million; the tax benefits went to a partnership of about 35 people. He would not identify the owners.

Recent data on abuses in the program are scarce. But a 1984 IRS study examined 42 deductions taken for easement donations and determined that all but one appeared inflated, resulting in overvaluations totaling nearly $32 million. The study found that property owners generally overvalued their easement deductions by an average of 220 percent.

The report also found that the tax benefits had largely gone to "higher income" people and companies.

Low-income families have difficulty paying for appraisals and coming up with the cash demanded by trusts, preservationists said.

"These tax deductions are only useful to people of great wealth or great income," George Mason University professor James D. Riggle said. He dismisses the write-offs as "tax deals for rich guys."

Database editor Sarah Cohen and researcher Alice Crites contributed to this report.