



The L'Enfant Trust

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Dear Lender:

You may be asked by a borrower on whose property you hold a mortgage or deed of trust to grant your consent, and to subordinate your lien, to the donation of a "conservation easement" which the borrower wishes to place on the property. This information sheet seeks to give you a brief background to help you respond to such a request.

The L'Enfant Trust is a non-profit organization established in 1978 to preserve Washington, D.C.'s historic, non-monumental properties and to promote the beauty of the city's streetscapes. The Trust relies on a unique legal tool – the conservation easement—to save historic buildings.

Conservation easements are created by a recorded deed of gift to the Trust in which the donor covenants, among other things, not to change the appearance of the property without the prior written permission of the Trust. The covenant is perpetual and "runs with the land," thus binding not only the donor but also all future owners.

The Internal Revenue Code allows donors of conservation easements to take a federal tax deduction for the fair value of the donation provided certain conditions are met. Among those conditions is the requirement that all holders of mortgages on the donated property acknowledge the donation and subordinate their mortgage to the Trust's right to enforce the easement. The tax regulations require the lender's acknowledgement and consent to assure that, even if the property is taken through foreclosure, the easement cannot thereby be extinguished.

Conservation easements themselves have a value, usually determined by appraisal, which the donors will typically claim as a tax deduction. Thus when a borrower asks you to subordinate a loan to a conservation easement, you are being asked to accept a diminution of the loan's collateral value. The majority of easements donated to the Trust have been properties subject to a mortgage or deed of trust. As a "good corporate citizen" and in almost every case the lender has been willing to consent to the donation and subordinate the loan to the easement.

Our preservation program has enjoyed and relies on the continued support of the lender community. If you have questions or concerns when approached by a borrower who wishes to make a conservation easement donation, we encourage you to give us a call.

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