

## Form 8283 and Appraisal Review

IRS Form 8283 is required for all noncash contributions valued at greater than \$5,000. The land trust's signature on Form 8283 does not represent agreement with the claimed value, but the *IRS has asked that land trusts use common sense*, despite no legal obligation to do so, in questioning appraisals that seem inflated. Early in the transaction, tactfully inquire about an owner's history with the land and expectations as to easement value. If the history is short and value expectations are high, use caution.

### Attachments to Form 8283

The IRS recommends, and in some cases requires, that landowners attach the following *complete and accurate* substantiation documents to *all* Form 8283 filings:

1. For conservation easement donations, a full supplemental statement (see instructions; must include a full description of the protected property and conservation purposes; a property address is not adequate) (required)
2. Full qualified appraisal (required for values of \$500,000 and greater for the year of the gift *and* for any carryover years in which the deduction will be claimed)
3. Copy of *recorded* deed or easement (or a full and detailed description) (strongly suggested)
4. Accurate and complete baseline documentation report (strongly suggested)
5. Contemporaneous written acknowledgment (CWA gift letter) (strongly suggested)
6. Executed mortgage subordination (strongly suggested)
7. For carryover contributions, (see instructions) a copy of the original Form 8283 from the previous year should be submitted with the completed Form 8283 for the current year.

Remember, failure to attach the required documentation or correctly complete all documents has been *the basis for a full denial of the entire deduction*. By including all documents on the IRS checklist, the IRS agent may limit inquiry. Donors are responsible for substantiating donations, but land trusts can help.

### Additional Details as Indicated by Case Law and Treasury Regulations

1. Form 8283 must be signed by the individual appraiser or appraisers if more than one appraiser worked on the appraisal, not just the appraiser's firm.
2. Form 8283 must be signed by the donee organization or all donees if more than one.
3. A sufficiently detailed "supplemental statement" helps revenue agents who may never have seen a conservation easement. Provide *accurate and complete* information.
4. Form 8283 is not a contemporaneous written acknowledgment (CWA) letter. The CWA letter must be separate and contemporaneous and have the appropriate goods and services language.

### Land Trust Standards and Practices: Form 8283 and Appraisals

*Land Trust Standards and Practices* does not require that land trusts determine the correct value of a donation, but it does ask that land trust personnel use their reasonable judgment to make a *general* assessment about whether the value the appraiser claimed is credible (see [Practice 10C2](#)). Ask logical, commonsense questions based on the land trust's general knowledge of land values in its region. Although land trusts have no legal responsibility for appraisals or tax benefits, they have an ethical responsibility to avoid participation in abuses of the tax policies that have so effectively led to the voluntary protection of millions of acres of land in America.

1. **Early Warning System.** Explain to the landowner *very* early in the process, in writing, that

substantiation of a donation is the *sole legal responsibility of the landowner*. However, if the land trust believes that the donation does not conform to tax laws, it may refuse to sign the Form 8283. Request a copy of the appraisal from the landowner prior to closing. Keep documentation of your request. See [Practice 10A1](#).

2. **Confidentiality Agreements.** The economic information contained in appraisals and on Form 8283 is confidential. Landowner representatives may ask the land trust to sign a confidentiality agreement. Keep appraisals and Form 8283 in accordance with the land trust's records policy for confidential materials.
3. **Fully Completed.** Treasury Regulations on substantiation of noncash gifts (see §170A-16(d)(5)) state that Form 8283 does not need to be completed before the donee signs. Certain information may be excluded, according to the regulations; *however, regardless* of the regulations, the Standards require land trusts to *only* sign Form 8283 if the information in Section B, Part 1, "Information on Donated Property," is complete and is an accurate representation of the gift ([Practice 10B2](#)). *Remember* that the Standards are the ethical and technical guidelines for the responsible operation of a land trust and, as such, they may require greater due diligence than required by law.
4. **Three-Tier System of Appraisal Review.** Think about appraisal review as a three-tiersystem.
  - a. Generally in line with the expected value and not missing any essential elements: the land trust signs Form 8283 without reservation.
  - b. Aggressive value based on land trust general sense of the local real estate market and/or missing a key element: the land trust might sign Form 8283, but may also consider sharing its observations with the donor. See [Practice 10C3](#).
  - c. Extremely high value in light of the land trust general sense of local land values, or the land trust believes no gift was made, or the gift described in the appraisal is not the gift received, or it may be or is a listed transaction: refuse to sign Form 8283. See Practices [10C3](#) and [10C4](#).

*If b or c, discuss with legal counsel to determine how best to respond and how to communicate with the donor. For transactions with pass-through entities of unrelated parties, see the Land Trust Alliance Tax Shelter Advisory.*

5. **Savvy Read of Form 8283.** Review Form 8283 data on the owner's basis, including when the owner acquired the land and the transaction structure. If the ownership history is short, the basis is low and the deduction reflects many multiples of value, the land trust must have concerns.
6. **Avoid Being an Editor or Giving Advice.** Editing the appraisal may create the impression that by making all of the changes, the land trust has approved the appraisal and therefore the appraisal is valid and accurate. Refrain from statements that appear to be legal advice. Direct landowners or their advisers to the resolution of a specific issue, to a review of the appraisal requirements or to additional justification of values, comparables, assumptions or methodology.
7. **Explain Any Decision Not to Sign.** If the land trust and its advisers determine that the land trust should not sign Form 8283, then the land trust and its attorney should write an explanatory letter or otherwise share its rationale with the donor.
8. **Have a Written Policy.** A written policy will help guide the land trust in its review, in its decisions and in its actions on signing the Form 8283 and in communicating with the donor.

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