

From LTA Practical Pointers

Here are some questions to consider when engaging legal counsel.

They do not necessarily need to be posed directly to an attorney, but answers should be confirmed through a reliable source.

- Are they admitted to practice in your state?
- Do they specialize in a particular area of practice? If so, what area(s)?
- How many conservation easement transactions have they participated in and at what level? (For example: Did they provide a title opinion? Review an easement? Draft and negotiate an easement from beginning to closing?)
- Have they ever represented a land trust?
- Have they represented landowners in donations of land, partial interests of land or qualified conservation contributions?
- Do they know how conservation easements are valued in an appraisal?
- Are they familiar with Section 170(h) of the Internal Revenue Code and the accompanying Treasury Regulations?
- Can they explain the potential implications of the 2014 Farm Bill (or other pertinent legislation) for a landowner donating a conservation easement?
- If the land trust and the attorney are located in an area where conservation easements are purchased through public agency funding, then questions specifically related to the purchase of development rights program might be appropriate, such as: Are they familiar with the PDR program administered by the local/state agency?
- Can they explain how they will work with your land trust in drafting the specific terms of a conservation easement, how they see your role in negotiations with the landowner and how they would communicate with the landowner's attorney?
- What are the fees? Are they by the hour or is it a flat rate?
- What assistants do they use (paralegals, word processors, administrative assistants) and how is their time billed?
- Whom will they consult if uncertain about certain aspects of the transaction? Will there be additional fees for such consultation?
- Do they provide pro bono or discounted services for nonprofit entities?
- Do they charge a retainer?
- What other expenses can your land trust be expected to pay (for example, copies, fax transmissions, long distance calls)?