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### Conservation Easement Deduction Unhinged By Mortgage

Conservation easement tax cases seem to be all the rage these days, even if all the authority isn't exactly inspiring. See [Facade Easement: No \(Qualified\) Appraisal, No Tax Deduction](#). Despite the hiccups, there's good reason for their popularity. Unlike many easements, [conservation easements](#) are not rights of passage over land.



(Photo credit: Wikipedia)

They are rights to enforce preservation and restrict future development. They can preserve natural habitat or a building's historical façade. Since you are giving legal rights to charity you can claim a tax deduction.

That's so even though local zoning or historic preservation laws may **already** prevent altering the historical character of the building. The latest case is [Wall v. Commissioner](#). Mr. Wall claimed a deduction which the IRS denied. Although he filed in Tax Court, he seems to have given up, allowing the IRS to win opposed. Perhaps Mr. Wall saw the writing on the wall (sorry).

Mr. Wall gave an easement over his home to the Landmarks Preservation Council of Illinois. The IRS denied it and slapped on big penalties. The IRS moved for summary judgment, throwing Mr. Wall a bone that

penalties should not be imposed if his deductions were disallowed as a matter of law. Wall didn't oppose the motion so the court granted it.

The problem with Wall's façade easement were mortgages held by Bank of America and First Bank & Trust. Façade easements must be in perpetuity. Although the easement agreement mentioned the mortgages, it wasn't clear that the lenders were actually subordinated to the interests of the charity. If the house burned down, the banks would get the money, not the charity.

As we noted here—[Mortgage Kills Façade Easement Tax Deduction](#)—this is a fatal problem. It doesn't matter how nice your appraisal looks or how bona fide the charity is that accepts it. It also doesn't matter how unlikely it is that the property will be destroyed. If as a legal matter the property could burn down or wash away in a flood and the lender will get first dibs on the money, you can't say the charity's interest is perpetual.

For more, see:

[Façade Easement: No \(Qualified\) Appraisal, No Tax Deduction](#)

[Golf Course Tax Deductions Hit The Rough](#)

[IRS Still Fighting Conservation Tax Breaks](#)

[Claim Your Façade Easement Now \(Just Not With This Promoter\)](#)

[Fancy Appraisals Can Defeat IRS](#)

[No Appraisal No Deduction, Says Tax Court](#)

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