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Historic Huntsville Foundation

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Is Your House Historic?

Recognition Can Be A Boon to Ownership

[From **Preservation News**, October 1985, the monthly newspaper of the National Trust for Historic Preservation.]

These days the lines are dimly drawn between "old" and "historic." Those possessing pre-1935 homes should not cling to the notion that to be historic, houses must have beds graced by the sleeping General Washington in route to Philadelphia. A variety of historic rosters at local, state and national levels list everything from Art Deco residential hotels to colonial farms.

Although historic designation is basically honorary, it can in some cases qualify you for tax credits or reduced real-estate taxes and protect your historic house from encroachment from highways or unsympathetic new development.

But each level of listing confers its own honors and responsibilities. Starting from the top:

*** The federal government administers the National Register of Historic Places through the National Park Service. Created in 1966,

the Register has since listed 37,491 [about 45,500 as of October 1986] buildings, sites, objects and historic districts. To qualify, houses must meet one or more of the following criteria: be at least 50 years old; be related to famous persons or events; exemplify fine architectural style or craftsmanship; or yield important archeological or historical information.

National Register listing carries a few burdens for historic house owners. The government cannot tell you how to paint or side your house, or stop you from tearing it down, or from gutting the interior and installing open stairs.

There are, however, possible advantages. An owner installing an apartment in an attic or garage might qualify for the 25 percent [recently changed to 20 percent] investment tax credit that applies to certified rehab of historic buildings.

A common misconception is that the [20 percent] tax credit applies to all restoration. In fact, the credit is not available for residential work. Some commercial use must be involved. So unless you're planning on producing steel ingots, or opening a Bed & Breakfast, or converting part of the house to apartments, you will not qualify.

Keep this in mind: Register listing is mainly honorary. Basically, it will allow you to buy a \$140 bronze plaque. And it could increase the value of your house a bit.

office (SHPO). The SHPO will tell you all about nomination and direct you to reliable, private-sector advice. [The Alabama SHPO is headed by Mr. Larry Oaks, Alabama Historical Commission, 725 Monroe Street, Montgomery, AL 36130.]

*** State registers work in a similar fashion to the National Register. Some states will grant tax breaks to property owners who restore houses listed in their registers. [Alabama grants tax breaks only to commercial property on the National Register, but not to private homes used for business pur-

A common misconception is that the 20 percent tax credit applies to all restoration. In fact, the credit is not available for residential work.

One other Register benefit that, if slightly improbable, is worth noting: Any federal action that could harm your property -- such as a project to build a new dam or highway next door -- is subject to independent review by the Advisory Council on Historic Preservation. Often the council can convince the sponsoring agency to redesign their project to spare historic resources.

If you are considering buying a house listed in the National Register, or if you think your house could qualify for the Register, your first step is to contact your state historic preservation

poses.] The SHPO also administers the state register and can give you advice on getting listed.

*** Local designation can carry far more responsibility for the owner than either state or national recognition. Local landmark commissions can virtually lord over listed buildings, dictating rules for rehabilitation, color-schemes, additions and vetoing permits for partial or total demolition. Authority varies from city to city; some commissions can only make recommendations. [The Huntsville Historic Preservation Commission reviews proposals, then grants or denies

permission for changes according to local regulations. The next issue of the **Quarterly** will feature the newly revised guidelines for local historic districts from the Huntsville Historic Preservation Commission.]

In historic districts, these regulations clearly work in favor of the conscientious historic house owner. They can prevent your neighbors or developers from making unsympathetic changes to area houses or from adding out-of-scale high-rises or nakedly modern buildings.

table group can also earn the house owner a tax deduction.

However, the IRS is challenging these deductions in other regions of the U.S., so be sure to do your homework before making any moves. Again, your SHPO can advise you in these areas. [According to an update in the Editor's Column of the October 1986 **Preservation News**: "The IRS has helped clear up controversy over easement donations, which allow tax breaks in exchange for promises to preserve and maintain historic buildings."]

Several legal mechanisms can preserve your home in perpetuity.

Historic house owners should learn about other benefits of ownership and of methods that will also preserve the legacy of their tenure. Several legal mechanisms can preserve your home in perpetuity.

For example, easements, protective covenants and deed restrictions can ban alteration, demolition or addition to a house in perpetuity. Such built-in restrictions can also require future owners to maintain the house. [Keep in mind that such devices can prevent the historic house owner from realizing the full value that might be received from the sale of unrestricted property, especially in residential areas that are becoming commercial. See p. 22.] In certain regions, an easement donated to a certified chari-

For a brochure on the National Register and a complete list of SHPOs, write the National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C., 20013-7127.

NEED TO KNOW MORE?

The following publications offer advice on rehabilitation and restoration of historic houses:

The Old House Journal, a monthly newsletter of cheerfully delivered technical advice for old house owners, 69A Seventh Ave., Brooklyn, N.Y. 11217. Subscriptions \$18. (OHJ also publishes the

Old House Journal Catalog, a buyer's guide to products and

services for restoration of houses built before 1939.)

Technical Preservation Briefs, a series presenting the Interior Department's recommended procedures for care of historic buildings. Technical Preservation Services, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013-7127.

What is the National Register of Historic Places?, a fact sheet available from the Center for Historic Houses, National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036.

Conserve Neighborhoods, a newsletter published by the National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036. 10 issues/\$15 a year.

Respectful Rehabilitation: Answers to your Questions About Old Buildings. Down to earth advice from Technical Preservation Services compiled in a 1982 Preservation Press book. \$9.95 plus \$3.00

for shipping from the National Trust for Historic Preservation. 1785 Massachusetts Ave., N.W., Washington, D.C. 20036.

Preserving and Maintaining the Older Home, Shirley Hansen and Nancy Hubby, 1983, McGraw-Hill. All about restoring houses from the 1700s to 1940.

The Complete Book of Home Inspection: For the Buyer or Owner, McGraw Hill, 1980.

All About Old Buildings: The Whole Preservation Catalog. Complete guide to preserving our architectural heritage from Preservation Press. \$39.95 (hardcover) or \$24.95 (paper) plus \$3.00 handling and shipping. National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036.

The Secretary of the Interior's Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings, free from Technical Preservation Services, U.S. Interior Department, P.O. Box 37127, Washington, D.C. 20013-7127.



Facade Easements

[EDITOR'S NOTE: The following article is an editorially updated reprint of the article "Facade Easements - A Tax Break for the Homeowner" from the Fall 1979 issue of **Historic Huntsville Quarterly**. Recent changes in the preservation tax laws require a thorough investigation of current tax regulations by property owners interested in the use of facade easements for their historic properties.]

All of the tax advantages for historic properties established by the Tax Reform Act of 1976 and the Revenue Act of 1978 [and the Tax Reform Act of 1986 -- Ed.] apply only to depreciable properties, which eliminates owner occupied houses. However, there is one [possible] tax vehicle that can be utilized by owners of historic residential properties and that is the facade easement.

A facade easement, also known as a preservation easement, is a binding legal commitment, permanent in nature, to preserve a building in a given condition. It is a conveyance of a restrictive covenant to a non-profit organization that assures that the architectural integrity of the structure shall be maintained. It usually applies to the exterior, or street facade, of the building but can be extended to the interior as well. The terms of individual facade easements can vary widely and may include affirmative obligations of restoration and maintenance as well as simply restrictions on change.

The facade easement is a permanent agreement that runs with the land and is recorded in the county probate office. It provides permanent protection for the building facade even when the property changes ownership, because the property passes to the next owner minus the right to alter the exterior.

The facade easement is given to a public agency such as the Alabama Historical Commission or to a private non-profit organization dedicated to preservation such as the Historic Huntsville Foundation.

A facade easement is a method of making a charitable contribution, in the form of a building facade rather than cash, while assuring that the structure will be preserved. Because it is a charitable contribution, the owner [might] receive a tax savings via a deduction because the marketable value of the property has been reduced. The decreased value of the property should also be reflected in decreased ad valorem taxes. Property that will be

included in the owner's estate for federal estate tax purposes will presumably have a lesser value at the time of his death than the property would have had if the facade easement had not been granted; therefore, estate taxes attributable to that property [might] be reduced.

The facade easement has few firm rules governing its use or application. It can include component parts of a building, the grounds, or the interior or exterior of the structure. Each facade easement needs to be prepared in accordance with the individual property owner's intended use of the property in order to maximize his tax savings without restricting his expected use and enjoyment of it.

The terms of the easement may require that the property be maintained in good state of repair, that the property will not be subdivided, and that the property will not be altered or enlarged without the permission of the agency holding the easement. The easement can stipulate the use of the property for all time. A restriction on future usage would affect the value of the property and would specifically define the highest and best use of the property regardless of surrounding uses.

It should be understood that such an agreement to maintain the architectural integrity of the structure or property is legally binding and enforceable in the courts of law. The agency holding the easement may not be en-

forcing the terms today but could choose to do so in the future, and it can determine the specific maintenance required to keep the facade in satisfactory condition. It is reasonable to assume that maintenance requirements will become more, rather than less, rigid in the future and that inflation will continue to increase the cost of repairs.

On the positive side, the owner will be able to receive a tax savings [only taxpayers who itemize their returns] via a deduction as a charitable contribution because the covenant reduces the marketable value of the property.

To execute an easement, the owner must have an easement drafted by his lawyer and accepted by the charitable organization or public agency. The easement must then be recorded in the appropriate county probate office. When the easement is used for the purpose of preserving a historic property, it is assumed that the recipient organization will require the property to be registered on either the State or National Register of Historic Places. If the structure is in a historic district, the agency may require that it be certified as being of historic or architectural significance.

For the owner to qualify for the tax deduction, he must give the easement to an organization that satisfies the requirements of section 501 (c) (3) of the Internal Revenue Code. [Due to the 1986 preservation tax law

changes, an owner wishing to qualify should check with the Internal Revenue Service, which has recently helped clear up controversy over easement donations.] Basically, this defines a private, tax exempt organization established and operated exclusively for charitable or educational purposes. If the owner desires to give the easement to the State of Alabama, the accepting agency would be the Alabama Historical Commission.

Once the easement has been accepted and recorded, a qualified appraisal of the property must be made to determine the value of the gift. It is recommended that a well qualified appraiser be utilized in justifying the amount by which the facade easement reduces the market value of the property. A Member of the Appraisers Institute should be used.

To summarize, a facade easement is a legal means of assuring that specific features of a structure will be preserved in good condition in perpetuity. It can also be used to limit the uses to which the property can be put. Because the easement reduces the marketable value of the property, the owner can deduct the value of the gift, as determined by an appraisal, ... [according to current IRS codes]. The lowered appraisal value of the property should also be reflected in lower property taxes. The preservation easement permits an owner to contribute to the future of the community while [possibly] gaining a tax break for himself.

The disadvantage is that the property could be more difficult to sell because of the restrictions on its use and maintenance. Also keep in mind that the deduction taken as a result of the facade easement reduces the owner's basis in the property so that if sold, a prospective realization of income could incur that could be larger than anticipated.

It is important to recognize that the facade easement can be used with commercial and industrial properties as well as with residential ones. The facade easement placed on historic storefronts is becoming an increasingly popular method of insuring the architectural integrity of commercial areas. In Macon, Georgia, a program was established whereby an owner gives a facade easement on his storefront to the City of Macon in return for having it restored with Community Development Block Grant funds. Once the facade is restored, the owner is responsible for maintaining it.

It should be apparent that the preservation easement can be a very versatile tool when used for the conservation of the built environment. However, because the easement is a complex legal instrument with few rules, it is important that anyone considering its use consult his lawyer and/or accountant to determine how it might benefit his particular situation.

