



**REMAINDER INTEREST IN LAND:
GIVING LAND WHILE
CONTINUING TO LIVE ON IT**

Some landowners have donated land to the Vermont Land Trust, but have reserved for themselves, and sometimes others, the right to use and enjoy the property during their lifetimes. This is known as a gift of a **remainder interest**. Gifts of remainder interests are usually made by landowners in their mid-70s or older who have decided irrevocably that they want to leave the property to the Vermont Land Trust. It is a way for donors to take advantage of certain tax benefits and support VLT in the long run, while they continue to enjoy their property. It allows donors to take advantage of an immediate income tax deduction, and ensures that the Vermont Land Trust will automatically receive title at the donors' deaths, without the delay and expense of probate. Finally, VLT will place a permanent conservation easement on the property before it is sold, thereby ensuring that the land's conservation values will always be protected.

HOW DOES A GIFT OF A REMAINDER INTEREST WORK?

The donor executes a standard deed conveying the property to the Vermont Land Trust, but reserving a "life estate" for the donor and probably others. The deed requires that during the period of the life interests, the life tenants must pay the property taxes, keep the premises insured, and generally maintain the land and buildings in good condition. If the property generates rental or other income during the donor's lifetime, the donor retains the right to receive such income. If the property has conservation value, the deed may also prohibit any uses that would diminish or damage those values. Except for ensuring that its remainder interest is protected, the Vermont Land Trust has no right to use the property as long as any of the life tenants are alive.

Life interests can run simultaneously or consecutively. A husband and wife may share a life interest, as long as either is alive. A child may have a life interest after his or her parents are deceased. Life interests may apply to only part of the property. Several years ago, the VLT received a remainder interest in which the donors reserved for themselves a life interest in the entire property and gave a life interest in the house to a long-time employee. A gift of a remainder interest can be combined with a present gift to the charity. For example, a donor can retain a life interest in the house and homestead, but convey the balance of the property to the Vermont Land Trust outright. This yields a larger tax deduction for the donor, and passes the management responsibility for the land to the Vermont Land Trust. If, during the donor's lifetime, the donor no longer wishes to use the property, he/she can terminate his/her life estate, accelerate passage of title to the charity, and receive a further tax deduction. Finally, if, during the donor's lifetime, the donor no longer wishes to use the property but needs additional income (for example to pay nursing home expenses), the donor may release a life interest in return for receiving regular annuity payments for life. Upon the termination of the life interests, the property passes automatically to VLT without the delay of the probate process. The property is also exempt from any claims of creditors to the estate.

IS THE GIFT OF A REMAINDER INTEREST TAX-DEDUCTIBLE?

A donor can claim an income tax deduction for a gift of remainder interest when the property

- is a personal residence, including a second home;
- is a farm;
- OR
- has significant conservation, public recreation, or historic value under IRS rules.

The Vermont Land Trust can make a preliminary assessment of deductibility. However, donors should always seek the advice of competent legal counsel before making a charitable gift involving real property.

IF THE GIFT IS TAX-DEDUCTIBLE, HOW IS THE DEDUCTION CALCULATED?

Because the donor is keeping a life interest in the property, the charitable deduction is limited to the **present value** of the remainder interest that is being given to VLT. That value is determined from actuarial tables published by the IRS. It depends primarily upon the number of people who will hold a life interest, their ages, and the federal discount rate in effect at the time. In the examples that follow, we have assumed the discount rate is 5 percent.

Example: If the life tenant is age 90, the remainder interest is 80 percent of the value of the property. The figure drops to 58 percent if the life tenant is age 75, 36 percent at age 60 and just 12.5 percent at age 35. Obviously, the IRS regulations favor older donors. If there are two or more life tenants, the percentages are lower than if there is only one life tenant.

One way to increase the deduction is to have the donor first convey a conservation easement on the land to the Vermont Land Trust (assuming the donated property has conservation value), and then gift a remainder interest.

Example: A husband and wife, ages 75 and 70, own a house and 100 acres of land with a fair market value of \$200,000. If they donated just a remainder interest, their total deduction would be 46 percent of the property value, or \$84,000. On the other hand, if they first placed a conservation easement on the property, thus lowering its fair market value to \$125,000, then donated the remainder interest, their total deduction would be \$127,500.

\$75,000	— Value of the Conservation Easement (\$200,000 - \$125,000)
<u>\$52,500</u>	— 46 percent of \$125,000 restricted value
\$127,500	

The donors' deduction in the second case is significantly higher than the deduction in the first case.

As with all charitable contributions, the tax deduction for gifts involving appreciated property is limited to 30 percent of the donor's adjusted gross income. However, any unused portion can be carried over for up to five additional years. If the donor chooses to terminate his/her life interest early during his/her lifetime, the donor will then receive an additional income tax deduction based on the accelerated passage of title to the charity.

If the property being used for the gift of a remainder interest is subject to a mortgage, special income tax rules may apply which should be discussed with your tax advisor.

WHAT ARE THE ESTATE TAX IMPLICATIONS OF A REMAINDER INTEREST GIFT?

Where the donor is the only life tenant or the donors/life tenants are husband and wife, a gift of a remainder interest completely removes the property from their taxable estate. However, if the donor names a child or some other person as a life tenant, this may create a taxable gift.

Depending upon the circumstances, the gift may or may not qualify for the annual gift tax exclusion. It may also use a portion of the donor's lifetime gift tax credit, which could result in increased estate taxes at the donor's death. VLT staff can help make a preliminary evaluation of the estate tax consequences of such a gift, but ultimately donors must rely on their own legal, tax and financial advisors.

WHAT WILL THE VERMONT LAND TRUST DO WITH THE PROPERTY WHEN IT HAS FULL TITLE?

In most cases, the donor and the Vermont Land Trust have discussed what the ultimate disposition of the property will be before the gift of a remainder interest is made. Where the land has conservation value, VLT will place a permanent conservation easement on the property to protect those values. In most cases, the property will then be sold, and the proceeds used to build VLT's financial reserves or to protect other land. If public ownership of the property is appropriate, VLT may convey the property to a public entity with appropriate restrictions.

The Vermont Land Trust has occasionally received a bequest of land when the donor has not expressed his or her conservation goals. In those cases, VLT will use its best judgment to determine what natural resource values are important to protect through an easement. However, VLT prefers to talk with owners beforehand, so that it will be able to fulfill each person's wishes.

HOW DO I GET STARTED?

If you intend to gift real estate to the Vermont Land Trust, it is important to involve the VLT staff early in the process. We will need to determine that we can accept the gift under VLT board policy, search the legal title, and conduct a hazardous waste review, which is now standard procedure in real estate transactions.

We also need to have a complete understanding of your expectations on a number of issues: (1) whether you intend to reserve for yourself and others the right to continue to use the property for your lifetime(s); (2) what conservation restrictions you expect VLT to place on the property once it has received title; and (3) what the disposition and long-range ownership of the property will be.

If you intend to retain one or more life estates, we can calculate your income tax deduction if we know (1) the fair market value of the property (which must be determined by qualified appraisal) and (2) the birthdates of the persons who will hold life estates. VLT can draft the deed of transfer. As with any planned gift, we urge you to consult with your attorney and financial advisor before the transaction is finalized.

The Vermont Land Trust would be happy to prepare an analysis of how a gift of land with reserved life estates might fit your particular situation. If you would like further information about remainder trusts or other forms of gift planning, please contact:

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***Remainder Interest in Land: Giving Land While Continuing to Live on It* is one publication in a series on charitable giving:**

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To receive a copy of any of these materials, please contact the Montpelier office. For answers to questions or to learn more about how to include the Vermont Land Trust in your estate plans, contact Meghan McGeary, Director of Development, at meghan@vlt.org or at the number below.