

TEXAS HISTORICAL COMMISSION

HISTORIC
PRESERVATION EASEMENTS
INFORMATION
FOR BUILDING OWNERS

TEXAS
HISTORICAL
COMMISSION 
REAL PLACES TELLING REAL STORIES





The buildings that have easements and covenants placed on them are historic properties that tell the architectural and cultural stories of Texas.

A historic preservation easement is a voluntary legal agreement which protects a significant historic property, ensuring the property's historic character will be preserved.

BACKGROUND

The mission of the Texas Historical Commission (THC) is to protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment, and economic benefit of present and future generations. The THC employs over 300 people who work in various fields, including archeology, architecture, history, economic development, heritage tourism, public administration, historic sites management, and urban planning.

The THC's Division of Architecture (DOA) is responsible for reviewing work on historic structures under a variety of protections and Federal and State laws, including easements related to state and federal grants. These grants cover the spectrum of project development, from planning and minor repairs, to full restorations of historic properties. Some property owners receiving these grants may be required to work with DOA staff to file a preservation easement on their property, depending on specific grant program parameters.



Additional information about THC historic preservation easements can be found at thc.texas.gov/easements.

HISTORIC PRESERVATION EASEMENTS

THC holds historic preservation easements on nearly 300 properties throughout the state of Texas. There are easements on county courthouses, forts, ranch structures, theaters, historic homes, murals, train depots, libraries, and many other types of historic properties. THC's Division of Architecture staff provides oversight, consultation, and educational materials to those who have easements on their properties.

This brochure is for property owners who own a property with an existing preservation easement, as well as owners who are considering applying for a THC grant that may require the filing of an easement. It provides information on:

- The purpose of a preservation easement,
- The terms and conditions included in an easement, and
- The steps in preparing and filing an easement.

This brochure also looks at how to work with the THC after the filing of an easement, to maintain and preserve the historic character of the property. For information on THC easements associated with archaeological sites, contact Archeology Division at 512-463-6096 or archeology@thc.texas.gov.

In addition to preservation easements, the THC holds **deed covenants** on historic properties that were once under federal ownership but were transferred or sold to a private property owner. These deed covenants contain legally enforceable restrictions or conditions to ensure the long-term preservation of a property's significant historic character and features. Information on deed covenants is provided at the end of this brochure.



Many counties have taken advantage of the THC's Texas Historic Courthouse Preservation Program (THCPP) to fund courthouse restorations, undertake emergency or planning work, and update approved preservation master plans.

WHAT IS A PRESERVATION EASEMENT?

A historic preservation easement is a voluntary legal agreement which protects a significant historic property and assures the property's historic character and character-defining features will be preserved. Each easement is tailored to a particular property, based on the type of property and its history and architectural features. Easements preserve Texas history for the public's interest and protect the state's or nation's financial investment by requiring the landowner to maintain the property in good condition. An easement also requires review of future development and alterations to a property so as to ensure the preservation of its historic and architectural character.

Easements are recorded by a county clerk and run with the land, so the requirements apply to all future property owners for the duration of the easement. Some easements cover a specific period with an end date, while others are entered in perpetuity. The rules associated with grant programs typically establish an easement's term. THC is referred to as the easement **grantee** since the property owner **grants** the easement to THC. The property owner is referred to as the **grantor** since they are granting the preservation easement to THC.

WHAT DOES A PRESERVATION EASEMENT PROTECT?

Typically, an easement covers an entire property, but in special circumstances an easement might protect a single element or feature, such as a monument, enclosures, ornamental paintings, murals or wall treatment; a single building or multiple buildings on a property; and designed landscape features. While protecting the important characteristics of a property, an easement still allows use of the property as long as these uses do not alter the historic character and features of the property.

WHICH THC GRANT PROGRAMS REQUIRE A PRESERVATION EASEMENT?

The following THC grant programs, which are administered by DOA, may require the filing of an easement with the appropriate county clerk:

- The Texas Preservation Trust Fund (TPTF)
- The Texas Historic Courthouse Preservation Program (THCPP)

Not all grants require easements. Please check with appropriate THC staff to determine whether your project will require signing an easement.

THC also accepts or requires easements from the following National Park Service grants for properties in Texas. The easements associated with these grants are administered by THC's DOA and Community Heritage Development (CHD) staff:

- Certified Local Governments (CLG)
- Emergency Supplemental Historic Preservation Fund (ESHPPF)
- Save America's Treasures
- Historically Black Colleges & Universities Grant Program
- Main Street Building Façade Improvement Grants
- Other federally funded grants

Brief descriptions of these state and federal programs are provided at the end of this brochure.

WHAT TERMS AND CONDITIONS ARE INCLUDED IN AN EASEMENT?

Maintaining the Condition of the Property

Easements require maintaining the **baseline condition** of the property. The **baseline condition** is the condition of the property at the end of the grant-funded work. The baseline condition is captured on a Baseline Condition Form prepared by a Project Reviewer at the end of the grant-funded work, or as modifications are made to the property, and will be shared with you on request. The Baseline Condition Form contains information from the easement, in addition to information from the Project Completion Report, if available. This report describes grant-funded work at its completion and provides a photographic record of the work.



Easements protect commercial, government, and privately owned property.

The Baseline Condition Form

serves as a tool to assist in fulfilling the requirements of the easement. The Baseline Condition Form includes items such as:

- Legal information about each property
- Owner information
- Easement filing data
- Architectural/historical character-defining features
- Brief description of the grant-funded work at the property
- Summary of subsequent reviews of approved work or modifications to the site or structures
- Photographs, site plan, and/or drawings of completed work

Making Changes to the Property

Changes can be made to a property, but the easement specifies seeking THC's review and approval first to ensure the retention of the property's historic character. This review is completed by the assigned DOA Project Reviewer.

The following are some example activities requiring DOA review:

- Any changes that affect the overall historic, archeological, or architectural integrity of a property or its historic features, including the alteration, partial removal, construction, remodeling, demolition or other physical or structural change to the appearance or construction of such features.
- Substantial ground-disturbing activity or any work that might affect the structural soundness of the structures on a property.



Be sure to contact your Project Reviewer when considering changes to your property.

- Substantial changes in the use of a protected structure or property that may affect how the public experiences the property, and/or how significant spaces within the property are used or preserved.
- Vacating or abandoning any structures on the property.
- Ending standard maintenance procedures on the property.

Contact the DOA Project Reviewer during the planning phase of any anticipated work or changes to a property, including any planned major repairs. When you consult the THC early on a project, DOA staff will provide guidance to help set your project on the appropriate path forward. Early consultation can help you avoid redesign of a fully-developed project, which can be costly. DOA staff have worked with property owners on hundreds of rehabilitation and restoration projects, and, as a result, have extensive experience and knowledge about potential problems property owners may face in the easement project review process. As such, DOA staff can guide property owners on ways to effectively prevent those problems.

Conducting Routine Property Maintenance

As noted, a property covered by an easement is to be maintained in a sound state of repair and in a condition equal to or better than that defined in the property's baseline condition. Responsibilities include preventing or repairing conditions that may lead to significant deterioration, including but not limited to water intrusion, structural instability, and infestation by termites or other insects. Routine maintenance activities do not require review by the THC.

It's always a good idea to check with the DOA Project Reviewer if you are concerned that a proposed activity may be beyond basic maintenance and require review.

THC's Right to Inspect the Property

By signing an easement with THC, staff is allowed to inspect the property after providing reasonable notice that an inspection will be conducted. The purpose of an inspection is to determine compliance with the provisions of the easement associated with the property.

Property inspections may also be carried out following DOA's easement monitoring program. For some properties, the Easement Monitor may request self-monitoring, in lieu of inspecting sites in-person, by sending a Self-Monitoring Form. In this case, the Easement Program staff will guide the property owner on how to assess the property and the protected elements of the property covered by the easement, and on any aspects of the property that have issues or are of concern.



Easements can be placed on features on the interior of a building, such as murals.

Based on a review of the Self-Monitoring Form, the Easement Monitor will notify you if there are:

- Any maintenance concerns. DOA staff may provide recommendations for next steps, including suggesting appropriate repair methods, or whether to hire a professional consultant to further investigate the issue(s).
- Changes between a previous inspection and the current inspection. Modifications will need to be recorded, provided there is no record of review in the THC's files.

DOA staff will most often conduct the monitoring. As noted in the easement, the THC has the right to inspect the Property at all reasonable times and on reasonable notice to Grantor for the purpose of inspecting, photographing, and surveying all portions of the property. When DOA conducts the monitoring, the forms and results are available upon written request.

What are the steps in preparing an easement for a THC grant?

The following key steps show how preparation and filing of an easement fits into DOA's grant process:

- A property owner submits a grant application to DOA.
- DOA awards the grant.
- DOA and the property owner execute the grant funding agreement.

- DOA, in consultation with the property owner, prepares the easement.
- The easement is signed by THC and the property owner.
- The easement is filed with the appropriate county clerk's office. Easements are generally signed and filed with the county clerk before a property owner is fully reimbursed.

Easements are usually prepared concurrently with the grant funding agreement. The THC uses an easement template for current and future easements.

The easement template for THC grants has three attachments. There may be times when the DOA Project Reviewer will gather additional information in order to complete these attachments. The following is a description of each attachment:

Attachment A: Legal Description: This attachment includes a written legal description of the property boundary, a description of the easement boundary (that is, the area to be covered by the easement), and a map, or site plan, that shows the easement boundary. This information is provided by the grant recipient.

Attachment B: Initial Property Description: This attachment provides a detailed look at the property at the time of a grant award (including the condition following an emergency). It also includes a summary of the property's significance and a property description as follows:

- Potential for archeology (based on the THC's Archeology Division staff's assessment)
- Architectural description of buildings and structures on the property covered by the easement,
- A list of the property's historic character-defining features, and
- Existing conditions of the property and its buildings and structures covered by the easement.
- Photographs at 1600 x 1200 pixels or larger should be provided for storage in THC's digital easement files.

This information is provided by the grant recipient, but may be prepared by a design professional.

Attachment C: Scope of Work: This attachment is a description of the proposed grant-funded project. This information may be compiled by the DOA Project Reviewer or in consultation with a design professional or contractor.

These three attachments must be approved by DOA before they are included with the easement.

DOA may also need information on the following in order to prepare an easement, or DOA may request this information after the filing of the easement or after completion of the grant-funded project. You should consult with the DOA Project Reviewer to determine which type of information is needed in relation to THC's grant requirements:

Insurance: The easement, and in some cases the DOA grant, will specify the type of required insurance on a property. This may include standard fire and extended coverage policies, in addition to comprehensive general liability insurance against claims for personal injury, death and property damage. A new Certificate of Insurance is required to be sent to THC annually when insurance is renewed, which is usually once a year.

Subordination Agreements: The THC requires a subordination agreement for a property subject to a pre-existing mortgage. In the event of a foreclosure, the easement is not extinguished because the lender subordinate its rights in the property to the rights of the easement holder (the THC). When a mortgage holder subordinates a mortgage to a preservation easement, they agree to allow the easement to be the first in the chain of title, so that in the event of a default the easement survives intact.

Encumbrances: DOA will also need information on encumbrances on a property covered by an easement, such as any liens on the property related to taxes or utility payments.



Easements can include buildings and elements of the associated landscape.

What are the steps in filing an easement?

After the THC Project Reviewer approves the completed easement with attachments, it will be sent to the grant recipient for notarized signature. Once returned to the reviewer, THC will provide a notarized signature, followed by returning the document to the grant recipient to be filed with the county clerk in the county where the property is located. The grant recipient is then responsible to return the original registered copy to THC. An original signed copy of the easement should be recorded with the county clerk's office no later than 30 days following execution of the easement, unless a formal extension is requested in writing and approved by the THC. A certified copy of the easement with the recordation date should then be sent to DOA as the last step in the process.

What happens after the filing of an easement?

The primary activity after the filing of an easement is monitoring, as discussed above, in addition to describing the current property condition covered by the easement. DOA staff will request Certificates of Insurance at annual renewals, in addition to asking questions about:

- Any changes to contact information.
- Potential new projects at the property.
- Changes in property ownership, including informing new owners of the easement or deed covenant on the property.

What happens if you violate the terms of the easement?

On occasion, monitoring conducted by DOA may reveal a violation of the terms of an easement. In most cases, these violations will be minor. Minor violations are those that result from inappropriate alterations or lack of proper maintenance where no permanent damage to the protected features or preservation value of the property occurs. Minor violations do not involve changes to the architectural, historical, or structural integrity of property features.

DOA staff will communicate in writing to resolve minor violations, including establishing a time frame to address and document the violation issue.

Major violations include, but are not limited to, changes that affect the overall historic or architectural integrity of a property or its character-defining features, including the partial removal, construction, remodeling, demolition or other physical or structural change to the appearance or construction of such features, without THC's written approval. Violations of the easement terms should be avoided due to the consequences inherent in legal agreements. THC staff will work with the landowner to resolve the issues according to the terms of the easement.

Please note that not responding to an easement monitoring request also constitutes a violation.



It is important to maintain all aspects of your property when under a preservation easement.

What about deed covenants on a property?

If planning to purchase a property as a result of a federal agency's disposal program, such as a former U.S. Post Office, DOA should be contacted as the property may be covered by a deed covenant.

A deed covenant ensures the long-term preservation of a property's significant historic character and features in exchange for grant funding or ownership of the property. That is, a deed covenant obligates a property owner to refrain from activities that may damage or destroy the features that distinguish the property as a unique representation of Texas history, architecture, or culture.

Federal agencies, such as the General Services Administration and the Department of Defense, generally use deed covenants to protect the significant historic features of National Register of Historic Places (National Register) listed and eligible properties to be removed from federal ownership or control, and then given or sold to a non-federal property owner. The National Register, which is administered by the National Park Service in partnership with each state's State Historic Preservation Officer (SHPO), is the national list of significant historical and archeological properties worthy of preservation. The Executive Director of THC is the Texas SHPO.

A federal agency will insert a deed covenant into the deed transferring the property to a new owner. While THC does not sign the deed covenant included in the deed for a federal property transfer, THC is the entity enforcing the deed covenant for properties in Texas.



Specific features you will need to preserve will be called out in the easement and can include paint color, windows, and interior elements.

WHERE CAN YOU FIND MORE INFORMATION ON THC EASEMENTS? Additional information on THC's preservation easement program is [available](#) on our website.

You can also contact a DOA Project Reviewer. Each DOA Project Reviewer handles multiple counties in the state. Project Reviewer contact information is [available](#) here.

MORE INFORMATION ON THE THC PROGRAMS REQUIRING EASEMENTS

State Grant Programs

Texas Preservation Trust Fund (TPTF)

This program provides matching grants to qualified applicants for acquisition, survey, development, planning and heritage education activities leading to the preservation of historic architectural properties and archeological sites. The program prioritizes assistance to endangered properties and sites. Grants for historic architectural properties are available for properties listed in the National Register of Historic Places, designated as Recorded Texas Historic Landmarks or State Antiquities Landmarks, or determined by the THC to be eligible for such designations.

Texas Historic Courthouse Preservation Program (THCPP)

This program provides partial matching grants to Texas counties for the preservation of historic county courthouses in the form of planning and construction grants. To participate in the grant program, counties submit a preservation master plan for restoring and maintaining their courthouse. Once a master plan is approved by the THC, the county is eligible to apply for preservation funding under this program.

Federal Grant Programs

Certified Local Governments (CLG) grants

The National Historic Preservation Act (NHPA) established the national CLG program, requiring each SHPO to develop mechanisms for the certification of local governments, giving these local governments a formal role in the national historic preservation program. The national CLG program fosters local preservation activities by providing financial and technical assistance to participating local governments and developing a broader base of support for SHPOs. The NHPA requires SHPOs to subgrant at least 10% of a SHPO's annual appropriations from the national Historic Preservation Fund (HPF) to the state's CLGs. In Texas, these CLG grants are administered through the THC's CHD Division. CLG grants are available each year for projects that provide a lasting impact on historic preservation in a community. Typical projects include historic resource surveys, National Register nominations, and the development of preservation plans or design guidelines. Although less frequent, grants may also fund the rehabilitation of properties listed in the National Register. The NPS, which oversees this national program, requires the recording of preservation easements on properties receiving these CLG rehabilitation grants.

National Park Service Emergency Supplemental Historic Preservation Fund

In 2019, NPS awarded the THC over \$12 million for emergency historic preservation projects. The Hurricanes Harvey, Irma, and Maria Emergency Supplemental

Historic Preservation Fund (HIM-ESHPPF) program addresses damage inflicted by Hurricane Harvey in 41 Texas counties. The THC awarded over 35 projects as subgrants for disaster recovery activities, approved by NPS. The majority of the projects are development grants requiring preservation easements. These subgrants follow the requirements of NPS's HPF Grant Manual and involve properties that are listed in the National Register, and also properties that have been determined to be eligible for listing, provided that National Register nominations for formal listing are accepted by the SHPO before final project costs are reimbursed. Federal grant funding will likely continue to use this ESHPPF mechanism for future disasters.

Other Federal Programs

The State, Tribal, and Local Plans and Grants Division of NPS administers additional HPF grant programs.

As with other HPF grants, preservation easements are required for acquisition and development projects associated with these programs. While the THC has no role in the selection or oversight of the grants through these programs, the THC has been willing to hold the resulting easements in the agency's capacity as SHPO. These federal grant programs currently include:

- [Save America's Treasures Grants](#)
- [Historically Black Colleges and Universities Grant Program](#)
- [African American Civil Rights Grants](#)



Many of the county courthouses have spectacular central spaces with domes and stained glass that are important building features.

GLOSSARY OF TERMS

Attachment A: Legal Description:

The legal description of a property and the boundaries of the property protected by an easement. This should include maps that graphically show the boundary(ies).

Attachment B: Initial Property

Condition: A description of a property, including its character-defining features and the overall condition of those features as well as the overall property when the easement is executed and prior to the completion of the grant-funded scope of work. It may also encompass a prior condition which resulted from an emergency, but has since been repaired. The potential for archeology within the property and/or existing archeology within the property will also be included in this description.

Attachment C: Scope of Work: The scope of work to be completed using the grant funds.

Baseline Condition: The condition of a property at the end of the grant-funded scope of work, as described in the Completion Report, in addition to any subsequent work approved by the THC and undertaken by property owner. The Baseline Condition changes each time a scope of work approved by the THC and undertaken by the property owner is completed. The property owner must maintain the property in this condition.

Character-defining features: Those components of the property that, collectively, convey its significance and make it eligible for listing in the National Register of Historic Places. These constitute the most significant aspects of a property and are protected by an easement or a deed covenant, in addition to the property as a whole.

Deed Covenant: Serves as a property owner's promise to maintain, rehabilitate or restore the property in exchange for grant funding or ownership of the property. A deed covenant obligates the property owner to refrain from activities that may damage or destroy the features that distinguish the property as unique, iconic, or representative of a style, craftsman, or period in history.

Easement: A voluntary legal agreement, which protects a significant historic property and ensures the property's historic character will be preserved. Each easement is tailored to a particular property, based on the type of property and its historical features and architectural elements. An easement might protect a single element or feature, such as site features, a monument, enclosures, ornamental painting, mural or wall treatment, a single building or buildings, additions to buildings on a property, but will most often protect the entire property.

Maintenance: In-kind repair using like materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of a property's structures. Maintenance does not include changes in the appearance, materials, colors, and workmanship from that existing prior to the maintenance.

Grantee: The right to enforce an easement is held by the THC; so, the THC is referred to as the easement **grantee** since the property owner **grants** the easement to the THC.

Grantor: A property owner grants an easement to the THC, so the owner is referred to as the **grantor**.

Property: In the THC's easement template, a "property" is the real property protected by an easement, as described in Attachment A, together with the property's structures.

Violation: A violation is any action or event or lack of maintenance that caused or has the potential to cause harm to the elements or features of a property that are protected by the easement or covenant; or any action, event, or failure to act that conflicts with or contradicts any restrictions contained within the easement or covenant.



Character-defining features of historic properties should be preserved in order to retain the architectural and historic significance of the building.



TEXAS
HISTORICAL
COMMISSION 
REAL PLACES TELLING REAL STORIES

thc.texas.gov

For more information about THC historic preservation easements,
please email architecture@thc.texas.gov or call 512-463-6094.