

Is your land trust a material advisor to a listed transaction?

Requirements for land trusts working on donations by pass-through entities

The [listed transactions regulations](#) have important implications for land trusts working on donations by pass-through entities. The regulations require reporting for donations determined to be “listed transactions.” It is the IRS’s chosen way to identify potentially fraudulent donations. These regulatory requirements specifically cover those exempted by the [Charitable Conservation Easement Program Integrity Act](#). (Please see Land Trust Decision Tree #1, [Is this easement deduction disallowed?](#)). Listed transactions require reporting by participants in those transactions. Though land trusts are not considered participants, they may be considered material advisors who have their own set of reporting requirements and financial penalties for noncompliance.

Please consult an attorney to understand the full compliance issues as the information provided here is not, nor should be construed as legal advice.

If the land trust has determined that the donation

- 1) would not be disqualified by the Integrity Act ([Land Trust Decision Tree #1](#))
- 2) would be categorized as a listed transaction ([Land Trust Decision Tree #2](#))

then the following decision tree can assist a land trust in determining if it meets the criteria of a material advisor. If applicable, the material advisor regulations require the land trust to report details about the donation on Form 8918. Failure to report triggers a \$200,000 penalty with a potential \$10,000 daily penalty to accrue. Ideally, go through the decision trees at the beginning of every project with a pass-through entity.

(Be aware that these listed transactions regulations do apply to already completed donations since 2018. Land trust staff can tackle the questions in whatever order works best, given the number of transactions they have to look at and the ease with which their records allow them to access the required information.)

DISCLAIMER: The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that the Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Alliance is solely responsible for the content of this series.

Q1

Is the donation a listed syndicated conservation easement transaction (see Land Trust Decision Tree #2 Is this donation a listed transaction?)?

Yes	No
Go to Q2.	Stop. Verify with your tax attorney that the material advisor regulations do not apply to your land trust. Document this analysis and determination and retain this documentation in your files.

Q2

Did your land trust take gross income of \$10,000 or more as a fee for services in connection with any material aid, assistance or advice for organizing, managing, promoting, selling, implementing, insuring or carrying out the listed transaction?

Note that this is the IRS's criteria for being a material advisor.

Fees include tax strategy, advice (whether or not tax advice), and implementing the reportable transaction. Fees also include consideration for services to analyze the transaction (whether or not related to the tax consequences of the transaction), to implement the transaction and to document the transaction.

Yes	No
Go to Q3.	Stop. Verify with your tax attorney that the land trust is not a material advisor. Document this analysis and determination and retain this documentation in your files.

Unsure
Charitable donations to a land trust for a stewardship contribution, signing the Form 8283, and providing a contemporaneous written acknowledgement do not mean the land trust is a material advisor, but each situation is unique, so you should consult with your attorney. Other activities not expressly mentioned in the listed transactions regulations such as the preparation of baseline documentation may have some risk exposure that might cause the IRS to categorize certain preparers as material advisors in preparing a tax statement. Consult an attorney to determine if you need to report the transaction.

Q3

Did your land trust provide any material aid, assistance, or advice with respect to the organizing, managing, promoting, selling, implementing, insuring, or carrying out the donation?

The IRS further explains this criterion by asking if the donee organization made a tax statement to the donor. A tax statement is defined as any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a listed transaction

Yes	No
Go to Q4 and consult an attorney to determine compliance.	Stop. Verify with your tax attorney that the regulations are not applicable to this transaction. Document this analysis and determination and retain this documentation in your files.

Q4

Did you land trust answer yes to both Q3 and Q4?

Yes	No
Consult an attorney to determine compliance. If both Q3 and Q4 criteria are met, then your land trust may be defined as a material advisor requiring reporting to the IRS on Form 8918 and requiring maintenance of lists and records about these donations.	Both criteria must be met to be considered a material advisor. If you answered no to one of these questions, then verify with your attorney that your land trust is not a material advisor. Document this analysis and determination and retain this documentation in your files.

PENALTIES FOR FAILURE TO REPORT: The penalty imposed for failure to report as a material advisor in listed transactions is the greater of:

- Either \$200,000 **OR** 50% of the gross income from providing aid, assistance or advice about the listed transaction before the date the return is filed.
- If the failure is intentional, the percentage is 75%.

RECORDKEEPING: If your land trust is defined as a material advisor then be sure to comply with the recordkeeping requirements of [26 CFR § 301.6112-1](#). If you are uncertain if your land trusts is a material advisor, the safest course is to keep all communications and documents in compliance with the regulation. The reason is that if the transaction is determined later to be reportable under the regulations you will avoid additional penalties for failure to keep appropriate documentation.

The Land Trust Alliance designed this material to help your land trust identify if it qualifies as a material advisor in a listed transaction, according to the 2024 Treasury regulations on listed transactions. This is a complex area of the law, so you should consult your attorney. The Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel.

Related resources:

- [Land Trust Decision Tree #1: Is this easement deduction disallowed pursuant to the Charitable Conservation Easement Program Integrity Act?](#)
- [Land Trust Decision Tree #2: Is this donation a listed transaction?](#)
- [IRS Listed Transactions Regulations: Frequently Asked Questions](#)
- [Pass-Through Entity Donor Due Diligence Checklist](#)

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