

# Who Has Standing?

## Conservation Easements in Pennsylvania Courts



*Who can assert claims and be heard in Pennsylvania's courts if a dispute heats up over the management of a conservation easement?*

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## Introduction

Who can assert claims and be heard in Pennsylvania's courts if a dispute heats up over the management of a conservation easement? The answer is pivotal; both for arranging the long-term stewardship of an easement and for informing the resolution of conflicts that may arise from time to time regarding it.

Application of this guide's findings may be found in the guide [Holders, Beneficiaries and Backup Grantees: Defining Roles and Relationships to Achieve Conservation Objectives](#) as well as in the [Model Grant of Conservation Easement and Commentary](#) (the

"Model Grant"), both published by the Pennsylvania Land Trust Association.

## What is "Standing"?

Federal and state courts are not obliged to listen to the grievances of anyone who files a civil action. One of the threshold issues that a judge determines is whether the person filing the action has a sufficient stake in the outcome, a sufficient connection to the matter, to justify court involvement. If not, the judge can deny access to the judicial system for lack of standing.

The legislative branch of government can limit standing as well. In Pennsylvania, court access to decide issues pertaining to conservation easements is limited by Section 5 of the [Conservation and Preservation Easements Act](#) (the "CPEA").

## Why is Standing Important in Easement Matters?

As discussed in the guide [Holders, Beneficiaries and Backup Grantees](#), the easement document must identify at least one holder of the easement and may identify others having an interest in the easement as well; for example, easement beneficiaries and backup grantees. Sometimes persons not mentioned in the easement document seek access to the courts to correct what they allege is easement mismanagement. Do they all have the right to their day in court? If so, the holder may be exposed to litigation by well meaning but uninformed people second-guessing the holder's easement management decisions.<sup>1</sup> On the other hand, the holder as a public charity is obliged to use due care in the management of its charitable assets. Shouldn't the courts be available to correct mismanagement of the land trust's conservation easements? Understanding the legal rules applicable to standing will help landowners and holders craft an easement document that meets the need for responsible oversight without unduly burdening the

parties to the easement with the risks and expense of litigation.

## How is Standing Restricted in Pennsylvania?

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### Legislative Response

The Pennsylvania legislature chose not to leave the question of standing entirely to the courts. The [CPEA](#) limits the right to access the courts, with respect to matters affecting conservation easements, to persons who fall within one of seven categories.<sup>2</sup> Among those accorded standing by the [CPEA](#) are: those owning an interest in the real property burdened by the easement, a person otherwise authorized by Federal or State law (which covers the state Attorney General<sup>3</sup>), **easement holders** and **persons having a third-party right of enforcement**. Those seeking access to the courts who cannot show that they fall within these categories will be eliminated from the civil action if another party raises the issue of their lack of standing under the [CPEA](#).

### Judicial Discretion

Those who fall within the categories set by the [CPEA](#) will be allowed to proceed if the court finds that they have sufficient interest in the outcome of the dispute to justify their interference in the easement management issue. In other words, the legislative limitation of the [CPEA](#) is the initial threshold but does not trump the power of the judiciary to determine the issue of standing based upon the person's connection to the matter affecting the conservation easement.

## Standing in Regard to Holders and Persons Granted Third-Party Rights

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As noted above, the [CPEA](#) accords standing to holders and persons granted third-party enforcement rights.

### Who is Eligible to be an Easement Holder?

The [CPEA](#) allows almost any public entity to be a holder. Otherwise, the holder must be (i) an entity formed for charitable purposes; (ii) registered as a charitable organization under Pennsylvania law; (iii)

recognized as a tax-exempt charitable organization under §501(c)(3) of the Internal Revenue Code; and (iv) founded to pursue one or more of the resource protection purposes identified in the [CPEA](#).<sup>4</sup> Such a private entity will be referred to in this guide as a "land trust".

### Who is Eligible as Having Third-Party Enforcement Rights?

A third-party right of enforcement, which must be provided in the easement document, may only be granted to an entity that "although eligible to be a holder, is not a holder."<sup>5</sup> The [Model Grant](#) identifies these persons as "Beneficiaries" and, in Article V of the [Model Grant](#), grants them specific enforcement rights. Thus, any public entity or land trust identified as a Beneficiary in the [Model Grant](#) is granted standing under the [CPEA](#).

### No Standing for Successive Holders

The [CPEA](#) does not provide successive holders,<sup>6</sup> meaning a holder other than an original grantee, with standing until such time as they actually become a holder. The potential to become a holder is insufficient. This may disqualify some backup grantees. An easement document may identify a public entity or land trust as having an interest in the easement but, absent the grant of a specific enforcement right, the backup grantee does not qualify as a holder of a third-party right of enforcement under the [CPEA](#). Absent this qualification, the backup grantee does not qualify for standing under the [CPEA](#).

The following examples clarify how differences in backup grantee clauses can result in standing or no standing for the backup grantee:

#### Example of Backup Grantee Clause Resulting in No Standing Under CPEA

If the holder shall cease to exist or fail to enforce the conservation easement, then the rights of holder shall be transferred to [name of backup grantee land trust] by a court of competent jurisdiction under applicable rules of *cy pres* jurisdiction...

In this example, the backup grantee land trust has not been granted any enforcement rights; thus, it has no standing, on its own, to obtain the transfer of the easement. This would be the case even if the above example were expanded to state that the backup grantee has standing to obtain the transfer.

### Example of Backup Grantee Clause Resulting in Standing Under CPEA

Owners and easement holder grant to [name of land trust] the right to exercise easement holder's rights and duties under this grant should easement holder fail to uphold and enforce in perpetuity the restrictions under this grant.

In this example, the backup grantee has been granted an enforcement right; thus, it qualifies as a holder of a third-party right of enforcement and, consequently, has standing, on its own, to petition a court of competent jurisdiction to transfer the easement to a qualified holder so as to further, as nearly as possible, the conservation objectives of the easement. The approach taken in this example is that adopted in the [Model Grant](#).<sup>7</sup>

### Benefits of CPEA to Qualified Holders and Easement Beneficiaries

To summarize the application of the above rules, any public entity or land trust identified in the easement document as a holder or a holder of a specific enforcement right is authorized under the [CPEA](#) to i) exercise the rights and powers granted to it in the document; and ii) avail itself of the judicial system to obtain appropriate remedies or relief in matters affecting the conservation easement.

## Consequences of CPEA to Non-Eligible Persons

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### Ineligible Holders

The [CPEA](#) rules out all individuals and all private entities, other than land trusts, as potential easement holders. The [CPEA](#) also rules them out as holders of a third-party right of enforcement. The policy reflected in the rule is that conservation easements need to be

managed by charitable organizations whose purpose is protection of natural resources. Failure to observe the rule may result in the consequences described in the below examples.

*Family Example.* An elderly easement donor wants her children to have the ability to enforce the easement should the land trust receiving the easement fail to do so. Under the [CPEA](#), the donor's family members are not eligible to be holders or hold third-party rights of enforcement. The result is that the easement is enforceable by the land trust but the children have no rights to exercise any rights with respect to the conservation easement and no standing on their own to intervene in the holder's easement management decisions.

*University Example.* A private university is willing to accept a conservation easement on an alumnus's landholdings because acceptance will facilitate the receipt of other generous gifts. Under the [CPEA](#), unless the university's purposes include the protection of natural resources, the university is not an eligible holder. The consequences in this case may be dire. Not only does the university lack standing to enforce the easement in the courts, but the grant itself may be in jeopardy due to the lack of a qualified holder.

### Prohibition on Non-Eligible Persons Claiming Enforcement Rights

The [CPEA](#) prohibits persons not named in the grant from alleging that they were one of a class of people intended to be benefited by the grant.<sup>8</sup> Any right of enforcement must be granted, if at all, by a specific provision in the easement document.

*Outside Group Example.* The easement holder and landowners agree upon a remediation plan to cure a violation of a restrictive covenant included in the grant. A local group, not named in the grant, disapproves of the plan and considers it a failure to enforce on the part of the easement holder. This local group, while qualified to be a holder, is not named in the grant as a holder or having a third-party right of enforcement. Under

the [CPEA](#), the local group has no direct right to enforce the easement.<sup>9</sup>

## Recourse to the Attorney General

Individuals and others denied standing under [CPEA](#) are, nevertheless, not without recourse when they observe instances of easement mismanagement. The Office of the Attorney General for the Commonwealth of Pennsylvania (the “Attorney General”) is charged with oversight of charitable organizations and is the appropriate venue to make known their concerns regarding the management of a conservation easement.<sup>10</sup> The legislative policy of the Commonwealth of Pennsylvania is to empower the Attorney General, not neighbors, family members or community groups, to exercise its reasonable judgment as to whether the conservation easement is being mismanaged.<sup>11</sup>

## Conclusion

Only those identified in the [CPEA](#), as adopted in Pennsylvania, have standing, which means that individuals, such as the original grantors and neighbors (if not subject to the same easement)<sup>12</sup> have no right to intervene in matters affecting conservation easements.<sup>13</sup> The Pennsylvania [CPEA](#) evidences a strong public policy to leave questions pertaining to appropriate easement management to public entities and land trusts specifically identified in the grant with the Attorney General available as and when needed to rectify situations in which those entrusted with conservation easements fail to meet their obligations.

## Related Resources at ConservationTools.org

### Library Categories

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[Model Grant of Conservation Easement](#)

### Related Guides

[Conservation and Preservation Easements Act](#)

[Conservation Easement](#)

[Holders, Beneficiaries and Backup Grantees: Defining Roles and Relationships to Achieve Conservation Objectives](#)

[Model Conservation Easement](#)

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<sup>1</sup> The holder also may be vulnerable to litigation by someone motivated not by conservation, but rather, a vendetta against a neighbor or some other personal matter.

<sup>2</sup> Section 5 of the CPEA reads: A legal or equitable action affecting a conservation or preservation easement may only be brought by any of the following:

1. An owner of the real property burdened by the easement.
2. A person that holds an estate in the real property burdened by the easement.
3. A person that has any interest or right in the real property burdened by the easement.
4. A holder of the easement.
5. A person having a third-party right of enforcement.
6. A person otherwise authorized by Federal or State law.
7. The owner of a coal interest in property contiguous to the property burdened by the easement or of coal interests which have been severed from the ownership of the property burdened by the easement.

<sup>3</sup> The category of “persons otherwise authorized by Federal or State law” would cover the Office of the Attorney General. It is the well-settled law of the Commonwealth that the Attorney General is responsible for the public supervision of charities through his *parens patriae* powers. In re Milton Hershey School Trust, 807 A.2d 324 (Pa.Cmwlt.2002); In re Estate of Coleman, 456 Pa. 163, 317 A.2d 631 (1974). The Commonwealth has *parens patriae* standing whenever it asserts quasi-sovereign interests, which are interests that the Commonwealth has in the well-being of its populace. Commonwealth v. TAP Pharmaceutical Products, Inc., 885 A.2d 1127 (Pa.Cmwlt.2005). “In every proceeding which affects a charitable trust, whether the action concerns invalidation, administration, termination or enforcement, the Attorney General must be made a party of record because the public as the real party in interest in the trust is otherwise not properly represented.” In re Pruner’s Estate, 390 Pa. 529, 532-33, 136 A.2d 107, 110 (1957). It is the duty of the Attorney General to ensure that the purpose of the charity remains charitable. Consequently, the Attorney General always has standing in any case involving a charity. See In re Milton Hershey School, 867 A.2d 674, 685 (Pa.Cmwlt.2005) (reversed on other grounds.)

<sup>4</sup> Section 3 of the CPEA defines “Holder” as follows:

The term means the following: (1) A governmental body empowered to hold an interest in real property under the laws of the United States or this Commonwealth. (2) A charitable corporation,

charitable association or charitable trust registered with the Bureau of Charitable Organizations of the Department of State and exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §501(c)(3)), or other Federal or Commonwealth statutes or regulations, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and, conserving or managing the use of natural resources; protecting wildlife; maintaining or enhancing land, air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

It should be noted that the Pennsylvania version of the [Uniform Conservation Easement Act](#) (the “Uniform Act”) adds to the “purposes and powers” clause included in the above quotation, the word “managing” so as to read: “conserving or managing the use of natural resources”. This and other changes to the Uniform Act suggest that the role of easement holder, in Pennsylvania, was intended to be dynamic, not static; to seek better ways and means to protect and foster natural resources, not just maintain existing conditions on the easement date.

<sup>5</sup> Section 3 of the CPEA defines “Third Party Right of Enforcement” as follows: A right to enforce the terms of a conservation or preservation easement provided in a conservation easement to enforce any of its terms, granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

<sup>6</sup> Section 3 of the Conservation Easement Act defines “Successive Holder” as follows: A holder who is not the original holder and who acquired its interest in a conservation or preservation easement by assignment or transfer.

<sup>7</sup> See §5.06(a) of the Commentary to the [Model Grant of Conservation Easement](#).

<sup>8</sup> The version of the [Uniform Conservation Easement Act](#) adopted in Pennsylvania modifies the definition of “third party right of enforcement” to add the qualification “provided in a conservation easement”.

<sup>9</sup> The group may make its concerns known to the Attorney General, who may investigate the matter and bring an

appropriate action in county orphan's court if the facts warrant an allegation of easement mismanagement.

<sup>10</sup> In Pennsylvania, the Orphans' Court has jurisdiction over property committed to charitable purposes under Rule 2156 of the Pennsylvania Rules of Judicial Administration, Pa. R.J.A. No. 2156, and under Section 711(21) of the Probate, Estates, and Fiduciaries Code, Act of July 1, 1972, as amended, 20 Pa. C.S.A. § 101-8815 (PEF Code), 20 Pa. C.S.A. § 711(21). Under Rule 5.5 of the Supreme Court Orphans' Court Rules, the Attorney General must receive notice of any Orphans' Court proceeding involving or affecting charitable assets.

<sup>11</sup> The Attorney General has a number of grounds upon which to rectify easement mismanagement when it occurs. Directors and officers of nonprofit corporations are required to manage its assets in good faith, in a manner they reasonably believe to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. *See* §5712 of the Pennsylvania Non-Profit Corporation Law, Pa. C.S. §5101 et seq. (the "Non-Profit Act"). Another ground to address easement mismanagement is §5547(b) of the Non-Profit Act, which provides that assets committed to a particular charitable purpose, may not be diverted from that purpose without an appropriate court order. The Attorney General is also empowered to take action to prevent charities from squandering, misappropriating or dissipating their charitable assets.

<sup>12</sup> Section 5(a)(2) of the CPEA allows a person that holds an estate in the real property burdened by the easement to have standing in regard to an action affecting the conservation easement.

<sup>13</sup> Excluded persons may see §5(a)(7) as an avenue to achieve standing by looking to judicial decisions or equitable principles; however, it should be noted that the Act, as adopted in Pennsylvania, intentionally limited standing to those with a specified relationship to the easement or to the eased property. The expansive standing furnished in the [Uniform Conservation Easement Act](#) was turned around in Pennsylvania by adding the word "only" to the opening sentence of §5: "An action affecting a conservation easement may [only] be brought by:..." Moreover, the drafters of the Pennsylvania version were not satisfied with the general reference to "authorized by other law" in the Uniform Act, which would have included common law. They intentionally narrowed the scope to "otherwise authorized by Federal or State law". It is not

clear what the drafters intended by adding the initially capitalized terms (perhaps statutory as opposed to common law?) but it is clear that they were not satisfied by the broad reference to "other law" in the Uniform Act.