

# Using a Deed Restriction to Protect Land



## A Path for When Neither a Land Trust Nor Government Can Help

*A family or group of neighbors may want to limit future use of a property, but that desire may not be shared as a priority by conservation organizations or government. In this case, a deed restriction may a sensible—albeit imperfect—tool that the private individuals can use on their own to achieve limited protection of the land.*

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## The Challenge

### Desire to Restrict Future Use of Property

A family may wish to limit future use of their land to benefit the community or for other reasons of importance to them. Or a group of neighbors may wish to conserve land in their neighborhood. This land may have natural or scenic value of benefit to the public but not so much as to be a conservation priority for financially constrained [land trusts](#) and local governments.

### Problem of Limited Charitable and Public Resources

Land trusts cannot conserve every square foot of land offered to them. The organizations, having finite resources, must carefully allocate their time, energy, and money; they must decide which lands in their operating area merit protection and must prioritize which of these lands they should focus on protecting. Even if a family or group of neighbors is willing to donate a [conservation easement](#) or

the land for conservation purposes, a land trust must still consider the costs of providing stewardship for these interests in perpetuity and the opportunity costs of not focusing on a higher priority conservation project. The land trust must also consider whether permanent protection is appropriate for the property. Local governments may have similar concerns.

### Self-Help

The lack of engagement by a land trust or government does not necessarily have to dissuade a family or group of neighbors from providing the land some protection. This is a situation where a deed restriction may be a sensible tool.

A deed restriction may go by different names including “declaration of covenants” and “restrictive covenants.”

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## Examples of Using Deed Restrictions

### Protecting Community Open Space

Neighbors fear that an undeveloped lot that they have informally maintained for years will be sold and developed. They agree that each family will pitch in to acquire and protect the property. A declaration of covenants will be recorded to prohibit use of the property other than for outdoor recreation and community gardens; the covenants will state that the restrictions exist to provide benefit to the neighboring properties. The families will also set up a system for decision making by the group and collection

and administration of sufficient funds to pay necessary expenses such as property taxes and insurance.

Any or all of the neighbors will have the right to enforce the declaration of covenants in court if necessary. Neither a land trust nor government needs to be involved. The protection stays in place unless the owners of each of the properties benefitting from the covenants ALL agree (or at least do not object) to unwinding the covenants. This potential to undo the protection would be a terrible weakness if the restrictive covenants were intended to provide a permanent public benefit but is entirely appropriate as a tool for providing a benefit focused on the neighbors.

## Protecting an Historic Wall

The property owners on either side of a fieldstone wall believed to pre-date the Revolutionary War want to be sure future owners will maintain the wall in good repair as they have done for many years. They record a declaration of covenants on each of their properties that provides for maintenance of the wall in perpetuity as a covenant running with the land with an agreement as to the sharing of costs of maintenance and repair.

## Supplementing a Conservation Easement

An agreement has been reached for a family to grant a [conservation easement](#) to a land trust except for one sticking point: The family wants the land trust to commit to protect a rose garden that has been maintained by the family for generations; the land trust declines because protecting a rose garden falls outside of the land trust's mission.

The family resolves the matter by planning to record a covenant requiring maintenance of the rose garden prior to or at the time of conveyance of their property to another. They ask their neighbors, the local horticultural group, and the historical society if they would mind being named in the covenant as having the right to enforce the covenant by providing maintenance for the garden if the then-owners do not do so.

## Get Legal Counsel

The examples offered in this guide leave many details unexplored. If people have interest in exploring the use of a deed restriction as a land protection tool, they should obtain legal counsel who can present all the options, ensure that their wishes are fulfilled as envisioned, and guard against unintended consequences. WeConservePA cannot provide assistance beyond the general guidance provided in this publication.



The latest version of this guide and related resources are posted at [WeConservePA.org](http://WeConservePA.org).

WeConservePA produced this guide with support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

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v. 2/16/2021