

Model

Grant of Trail Easement

with Commentary

A short-form alternative to the
Model Trail Easement Agreement

2nd Edition

Produced by the
Pennsylvania Land Trust Association

with support from the

Colcom Foundation

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Community Conservation Partnerships Program

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and other generous contributors

Find the most recent version of this
document at ConservationTools.org

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Preface

Brevity

The Pennsylvania Land Trust Association provides the [Model Grant of Trail Easement](#) (the "short form") as an alternative to the [Model Trail Easement Agreement](#) (the "long form"). The model is intended for use where a desire for brevity outweighs interest in settling within the easement document the variety of issues that can arise with the landowners and easement holder sharing interests in the same real estate.

With brevity comes increased risk that the owners and easement holder will experience misunderstandings and conflict, problems that might be avoided if details regarding the nature of the trail, public use of it, and the respective rights and duties of the owners and holder are agreed to and memorialized on paper in advance of the easement being granted. However, some owners, even if they are enthusiastic about providing recreational opportunities to the public, won't tolerate the prospect of having to wade through and agree to the terms of a long easement document. And the reality is that a one-page document (exclusive of signature pages and exhibits) can operate to establish a trail for public use. This model is designed to serve as that document.

Using the Tool

Before using the short form, people may find it productive to review the long form and its commentary to gain an understanding of the full scope of issues that could be addressed in a grant of trail easement.

If the short form does not address all of the issues that the owners and holder want to have covered in the document, they should consider starting with the long form and selectively deleting material that they find unnecessary. Alternatively, material from the long form can be adapted into the short form.

The model's commentary explains the reasoning behind every provision and instructs on applying the model to particular circumstances. **Since a wealth of alternative and optional provisions are available in the long form and its commentary, most of that content is not repeated in this model's commentary.**

The model, as presented, is tailored to Pennsylvania law; users outside of Pennsylvania must customize it to account for differences in state laws.

Notes on the New Edition

The first edition of the model was published in 2010; this second edition was completed in 2018. In addition to various improvements to the model, the commentary has been expanded by 41%.

Use the Newest Version

The Pennsylvania Land Trust Association posts its models at ConservationTools.org and updates them to address changes in the law and new understandings in the field. Check the website for the most up-to-date material.



Improve the Guidance

The Pennsylvania Land Trust Association welcomes suggestions for improving its guidance. Please email your comments to info@conserveland.org.

Other Trail Resources

Visit ConservationTools.org to view the guides [Trail Easements](#), [Reducing Liability Associated with Public Access](#), [Mortgage Subordination](#), and [Universal Access Trails and Shared Use Paths](#), as well as other information regarding trails and easements.

Acknowledgements

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Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax parcel(s):

<p>Model Grant of Trail Easement 2nd edition (v. 2018.01.19)</p> <p>Published by the Pennsylvania Land Trust Association</p> <p>This and an alternative model, the <i>Model Trail Easement Agreement</i> (which addresses easement matters in greater detail), are available at ConservationTools.org.</p>

GRANT OF TRAIL EASEMENT

THIS GRANT OF TRAIL EASEMENT dated _____ is made by _____
_____ (the "Owners") in favor of _____
_____ (the "Holder") with respect to the following parcel(s) of land (the "Property")
more fully described in exhibit A.

Street address:

Municipality:

Parcel identifier:

County:

State: Pennsylvania

1. Trail Easement

Owners grant to Holder an easement in perpetuity to establish and make available for public use a trail, approximately ___ feet in clear tread width, in the location within the Property shown on the easement plan attached as exhibit B. If there is no easement plan attached to this grant, Holder may determine the location in its reasonable discretion. The easement includes the right to install footbridges, retaining walls, and other structures as necessary to prevent erosion and facilitate passage through wet areas; and install markers and other signs related to the trail.

2. Public Enters at Own Risk

Persons using the trail do so at their own risk. Neither Owners nor Holder may charge for access, nor do they assume any duty to inspect or maintain the trail or warn of any defects or dangerous conditions.

3. Recorded Document

This grant is to be recorded against the Property so as to be perpetually binding upon the undersigned Owners and their successors and assigns.

4. Exhibits

Each exhibit referred to in this grant is made a part of this grant by this reference.

5. Entire Agreement

This grant is the entire agreement of Owners and Holder pertaining to the trail and supersedes any other agreements or understandings whether or not in writing.

6. Defense of Claims

If a trail user asserts a claim for bodily injury or property damage caused by an unsafe condition on the trail, and the unsafe condition was not the fault of Owners or anyone on the Property at the invitation of Owners, then Holder agrees to defend such claim on behalf of both Owners and Holder and, if such defense is not successful, to hold Owners harmless from any judgment entered against Owners on account of such claim. To qualify for the protection offered by Holder under this paragraph, Owners must abide by the requirements for immunity developed under, or with respect to, the Recreational Use of Land and Water Act.

7. Consideration

The Owners acknowledge receipt of the sum of \$1.00 in consideration of this grant.

INTENDING TO BE LEGALLY BOUND, Owners have signed and delivered this grant to Holder as of the date set forth above.

Owner's name: (Seal)

Owner's name: (Seal)

The Holder joins in this grant to evidence its intention to be legally bound by its terms:

[Name of Holder]

By: _____ (Seal)
Name of signatory:
Title of signatory:

This document is based on the
Model Grant of Trail Easement
(v. 2018.01.19) provided by the
Pennsylvania Land Trust Association
and published at ConservationTools.org.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____ a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Commentary to the Model Grant of Trail Easement

General Instructions

When in Doubt, Check the Commentary. The purpose of each provision is explained and, often, variations are provided to address alternatives that may be useful in particular situations.

Guides and Models. Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by the Pennsylvania Land Trust Association and, thanks to the Association's donors, made available free-of-charge at [ConservationTools.org](https://www.ConservationTools.org).

Structure Tracks Model. The main body of the commentary follows the same structure as the model. Captions preceded by numbers refer to sections of the same title in the model.

Start from a Model. Each organization should feel free to create its own version of the model by incorporating additional or alternative provisions (from the commentary or otherwise) that reflect the policies and preferences of that organization. That version or the then-current version of the model available at [ConservationTools.org](https://www.ConservationTools.org) should be used as the starting point for each project. Avoid using a document prepared for another project as a starting point for a new easement. A model serves in part to remind users of the issues that need to be considered in the drafting process. The value

of a model is lost, and errors and omissions become virtually guaranteed, when a document prepared for another property is used as a starting point for a new document.

Get Legal Counsel. The model and commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. Any document drafted with assistance of this model should be completed with the guidance of legal counsel to ensure that the document accomplishes what the parties intend without unintended consequences.

Disclaimer Box. Once a document based on the model has been prepared or reviewed by an attorney licensed to practice law in the applicable state, you may delete the box at the bottom of the model's signature page that begins "The model on which this document is based should not be construed or relied upon as legal advice...."

Other States. Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.

Updates. Check [ConservationTools.org](https://www.ConservationTools.org) periodically for updates to the model.

Preliminary Matters

Recording

Space for Recording Information. The top of the model's first page provides space for information required by some county recording offices: the name and address of the preparer, the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. If the information is unneeded or undesirable in a particular county, delete the text but keep the lines in order to preserve a 3-inch margin at the top of the first page.

Margins. Minimum margin requirements vary among counties; however, a typical requirement is a 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right, and bottom margins. (Page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5-inch by 11-inch paper. The model is formatted to conform to these specifications.

Preparer Information. Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document; however, legal review is strongly recommended.

See the note "Get Legal Counsel" above. Do not identify a lawyer as the "preparer" if the lawyer did not, in fact, prepare the particular document or was not given the opportunity to review *all of the changes* made to the document. Lawyers and other professionals, such as architects and engineers, are legally and professionally responsible for the work they produce for clients.

Date for Tax Purposes. The date the grant was recorded in the public records establishes the year in which the donation (if any) of the easement was made for federal tax purposes.

Title of Document

Grant of Trail Easement. "Grant of Trail Easement" is an accurate title for the document and is often used for trail easements.

The Paper is Not the Property Interest. The document title could be shortened to "Trail Easement," but an easement is not a stack of paper; it is a real property interest. The granting document and the property interest conveyed by it are not the same thing, but confusion can arise on the distinction when they share a name.

Conveyance, Not Contract. “Trail Easement Agreement,” which is the default title of the Pennsylvania Land Trust Association’s long-form model, is an attractive, marketing-friendly title for the document. However, it is imperfect in that the document is principally an instrument that transfers a real property interest. The document sets forth the understandings of the parties about how they intend their relationship, as holders of interests in the same property, to work, but does so only in support of the grant of easement.

Opening Recital

Purpose. The opening recital identifies the parties to the document and the effective date of the document.

Easement Date

Handwritten. The date can be added in handwriting at the time of signing.

What Date? The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), replace “dated _____” with the phrase:

signed _____ but delivered _____.

Owners

Identify Persons Granting the Easement. Insert names exactly as set forth in the deed by which the present Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. Recite these facts either in the opening recital or at the end of the legal description attached as exhibit A.

All Owners Must Join. All Owners must join in the grant for it to be effective under the law.

Relationship of Owners. The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Examples:

X and Y, husband and wife
and

X and Y, as joint tenants with rights of survivorship.

Not an Individual. If an entity other than an individual person is granting the easement, a phrase identifying the type of

entity and state in which the entity was created is desirable but not necessary for recording or other purposes. Example:

X, a Pennsylvania limited partnership.

Holder

Insert the full legal name of Holder (including Inc. or Incorporated if part of the legal name) here.

A phrase identifying the type of entity and state in which Holder was created is desirable but not necessary for recording or other purposes. Example:

X, a Pennsylvania nonprofit corporation.

The terms “Grantors” and “Grantee” may be substituted for “Owners” and “Holder,” but this is not recommended. The terms Owners and Holder are more distinctive and recognizable than Grantor and Grantee whose similarity in spelling can sometimes lead to confusion.

Property

Property. The legal description of the Property must be attached as exhibit A. It can be a photocopy of the legal description in the deed that vests title to the Property in the Owners that are granting the easement.

Street Address. Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example:

100 acres more or less on the north side of ___ Road west of the intersection of ___ Road and ___ Road.

Municipality. Insert the city, township, or borough in which the Property is located. This may or may not be the name of the “city” used for mailing address purposes.

County. Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.

Parcel Identifier. The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. See Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as exhibit A.

I. Trail Easement

Purpose. This section operates as a grant of easement from the Owners to Holder over a portion of the Property for (a) establishing a trail and (b) making it available to the public.

Model Assumes No Warranty. The model is drafted with the assumption that the Owners do not wish to warrant that they own in fee simple the interest in land being conveyed and have the right to convey it, preferring instead to grant the

easement with no guarantee as to their right to do so. It’s not that the Owners don’t have the ownership and rights, it’s just that in the context of little or no money changing hands, it’s not worth the Owners’ trouble and expense to absolutely assure that this is the case.

“Grant and Convey.” The words “grant and convey” have a special meaning in real estate law. When the Owners *grant and*

convey, that means that the Owners warrant that they own in fee the interest in the land being conveyed and have the right to convey it. If the Owners are willing to do that, then change “grant” to “grant and convey” in the text.

Perpetuity. The model explicitly states the perpetual nature of the easement; strictly speaking, this is unnecessary in Pennsylvania because Pennsylvania law provides that an easement is perpetual unless otherwise provided in the easement document. The Pennsylvania Land Trust Association and many others generally and strongly advise Holders against entering easement agreements for a term of less than perpetuity.

Easement Plan. Attachment of an easement plan is optional. If no easement plan is attached, the location of the trail will be established by the Holder.

Trail Location. See “1.01 Easement Area” in the commentary to the long-form [Model Trail Easement Agreement](#) and “Easement Location” in the guide [Trail Easements](#) for discussions of other options for addressing the location of the trail.

No Need to Specify Width. If desired, delete the limitation on trail width. There is no need to specify a limit, but some Owners take comfort that the trail they are allowing can’t eventually grow into a “bicycle superhighway” or the like.

Easement Purpose. See “Easement Purpose” in the guide [Trail Easements](#) for a discussion of setting the purpose of the easement.

Signage. The grant of easement explicitly includes providing the Holder the right to install signage pertaining to the trail to prevent the possibility of dispute as to whether Holder has this right.

Preventing Erosion and Water Problems. The model clarifies that the Holder may install structures necessary to prevent erosion and facilitate passage through wet areas. Inclusion of the clarification may not be strictly necessary but serves to ensure that the Owners are not surprised in the event that the Holder takes such measures.

No Direct Grant to Public. As in the long form, the grant of easement is to the Holder *not to the public*. The Holder may be compelled by other agreements to make the trail available to the public but the wording of the grant has been purposefully chosen to avoid the application of the public trust doctrine and other legal principles that may put the Holder in the position of acting as a fiduciary or trustee for the benefit of the public.

2. Public Enters at Own Risk

Purpose. The grant does not expressly burden either the Owners or Holder with responsibility for the safety of the public using the trail. The purpose of this section is to disavow any implied duties to the general public to inspect, repair, or warn against possibly unsafe conditions; it clarifies that people relying upon this grant for rights of entry need to take responsibility for their own safety.

No Charge for Access. The prohibition on charging fees helps the Owners and Holder meet the requirements for immunity from liability under the Pennsylvania Recreation Use of Land and Water Act, 68 P.S. §§ 477-4 and 477-6.

Reducing Risk of Liability. The section’s disavowal of responsibility does not mean that the Owners or Holder should not try to act responsibly and otherwise seek to reduce risk. See “Protection from Liability” in the guide [Trail Easements](#) for more information.

3. Recorded Document

Recording is Necessary. The grant is complete and binding upon those granting the easement once the document is signed and unconditionally delivered. However, recording in the public land records of the county in which the Property is located is necessary to make the covenants binding upon future owners.

Perpetually Binding. The term of the easement is indefinite. Owners are bound forever unless a termination occurs either by election of the Holder or by a court adjudication that, due to non-use for an extensive period of time, the easement has been abandoned.

4. Exhibits

Purpose. This section incorporates into the text of the document both the metes and bounds description of the Property and the Easement Plan, if any.

5. Entire Agreement

Purpose. This provision establishes that the written text of the document signed by the Owners and Holder is final and

definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.

Off-record Document. The guide [Reducing Liability Associated with Public Access](#) notes circumstances in which the Owners and Holder may want to have a written understanding between themselves that is not part of the publicly recorded document so as not to incentivize claims by persons allegedly injured while using the trail. Such off-record agreements should be mentioned here as not being superseded by the terms of this grant of trail easement.

Representations in Prior Agreement. You also may want to modify this provision if there are representations, warranties, or agreements contained in earlier communications that are intended to survive the grant.

Conservation Easement. If the Owners are delivering the trail easement in connection with a donation, sale, or bargain-

sale of a conservation easement, you may want to add a provision such as the following to the section to clarify that development and use of the trail is subject to the restrictions of the conservation easement and, if the grant potentially provides tax benefits to the Owners, to increase the likelihood that the IRS will view the two grants as a single transaction.

This grant has been executed and delivered in connection with a grant of conservation easement dated the same date as this easement. The conservation easement is intended to be recorded prior to this easement and the rights of Owners and Holder under this easement must be exercised under and subject to the conservation easement's restrictions. Article 6 of the grant of conservation easement incorporates this grant of trail easement as a single transaction: if a donation, a single donation, and, if a sale in whole or in part, a single sales transaction.

6. Defense of Claims

Purpose. This section is intended to give the Owners comfort that, should the defense of immunity under the Recreational Use of Land and Water Act not be sufficient to quash a civil action for an alleged injury to a trail user, then the Holder, either directly or through its insurer, will engage legal counsel to defend the civil action for both itself and the Owners. The Owners need not furnish their own defense. Should the Owners or Holder be found legally responsible for the unsafe condition, then it is the obligation of Holders to pay the claim.

No Charge Permitted. The provision requires the Owners to abide by the requirements for immunity that have developed with respect to the Recreational Use of Land and Water Act. A key requirement is dictated by the Act: No charge may be imposed for the recreational use of the property. This requirement is explicitly addressed in §2 of the model.

Owners' Limited Responsibility. The Owners are responsible only for injury or damage caused by unsafe conditions that the Owners create. Claims for injuries caused by unsafe

condition—icing, slippery leaves, steep rocky slopes—that occur naturally are, by agreement of the Owners and Holder, the responsibility of the Holder to the extent immunity is not available.

Why is Holder Responsible? Unlike a typical conservation easement where the Holder does not have care, custody, or control of the eased property, the Holder of an easement granting the public a right of access across the Owners' property generally assumes management responsibilities for the trail. It is reasonable for the Holder to be responsible for what the Holder manages.

Unwilling to Indemnify. The Commonwealth of Pennsylvania and its departments and instrumentalities do not offer indemnity to others for claims as to which it is immune from liability under the doctrine of sovereign immunity. Counties, local governments, and private organizations acting as Holder may or may not be willing to indemnify the Owners from such claims. If a Holder is unwilling to indemnify the Owners, delete this section.

7. Consideration

Purpose. This section sets forth the amount of consideration (if any) being paid for the easement. The model denotes nominal consideration by listing \$1.00 as the consideration. If the actual amount of consideration is more than \$1.00, change the amount accordingly.

Nominal. In *Pennsylvania*, it is not strictly necessary to reference nominal consideration. As long as the phrase “intending to be legally bound” (see “Closing Matters” below) is retained in the document, this section may be deleted.

Closing Matters

Consideration in Pennsylvania. The phrase “INTENDING TO BE LEGALLY BOUND” is a valid substitute for consideration in the Commonwealth of Pennsylvania as provided by the Uniform Written Obligations Act, 33 Pa. Stat. §6. (The term

“consideration” means something of value given in return for a promise.) Use of the phrase is important in circumstances where the easement is being donated with no consideration

being given. Note that *only in Pennsylvania* is the phrase “intending to be legally bound” recognized by statute as a valid substitute for consideration.

Signature Lines. Add as many signature lines as are necessary to accommodate the number of Owners who will be signing the document.

The signature lines assume that the Owners are individual people. If an Owner is a corporation, partnership, or other entity, signature lines similar to those provided for the Holder should be substituted. Likewise, a form of acknowledgment similar to that provided for the Holder should be substituted

for the form provided in the model, which is appropriate only for individual Owners.

Witness/Attest: It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.

Acknowledgment. The date of the acknowledgment should not be earlier than the easement date entered at the beginning of the document.

Exhibits. Check that the exhibits referenced in the document are attached before it is signed and recorded in the public records.

Optional Additions

The long-form [Model Trail Easement Agreement](#) contains both within the model legal document and its commentary a wealth of provisions that could be added to this short-form model. However, if you are looking at adding more than a few straightforward provisions, you are likely better served by starting with the long form and paring back provisions that you don't want. Among the various provisions that may be of interest are:

- **Federal Tax Items.** If the trail easement is donated, in whole or in part, and otherwise meets the requirements for a qualified conservation contribution under IRC 170(h), a provision such as that provided in the supplemental provisions of the long form's commentary may be added to the document.
- **Governing Law.** Under §6.02 of the long form, the state whose laws govern the grant is specified.
- **Counterparts.** Section 6.07 of the long form provides that: “This [grant] may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one [document].”
- **Warranty.** Under §6.10 of the long form, Owners provide warranties to the Holder regarding liens, agreements pre-dating the easement, and hazardous materials.