



Resources for Keeping Conservation on Solid Ground

Conservation easements are one of the most effective legal tools for land conservation in America, but they are also threatened. Even land owned by land trusts is under constant pressure from development and conversion. Over two million acres of land are lost each year and we are quickly losing our most important natural, historic, forested, cultural and agricultural areas. Conservation easements and conserved lands across America are under attack from many sources – developers, utilities looking for new transmission corridors, the IRS and from landowners who purchase land under easement or land adjacent to preserves.

As property values rise, the incentive to disrupt or void easements or trespass on preserves increases. Many land trusts are not adequately prepared to defend against these threats. Very few have the financial means to defend even a single easement in court. The stakes are high, as a single adverse decision from a legal case could endanger the permanence of thousands of easements. Land trusts want to be ready to defend conserved properties when confronted with a challenge. Severe legal challenges are infrequent, but that could change as thousands of conserved properties move from the original landowners to new owners who may not share the original conservation vision and as trespass by neighbors increases. Land trusts exercise constant vigilance to ensure the gains made over time.

The Land Trust Alliance offers support, guidance, resources, tools, leadership to land trusts across America to uphold conservation permanence. This starts with daily routine prevention and continues with skillful, timely dispute resolution and litigation when land trusts face more serious and sustained challenges.

Forever, One Challenge At A Time

As the accomplishments of land trusts continue to grow in magnitude and visibility—land trusts have now conserved approximately 50 million acres—organizations will face additional legal threats to their conservation easements and fee-owned properties. These threats may come from successor landowners, neighbors or others in the community who do not share a conservation vision. Challenges from legal foundations, property-rights groups, state legislatures, government condemnation and the IRS have increased. In order to ensure conservation permanence the Alliance and land trusts together apply robust action to overcome these ongoing threats. Land trusts and their advisors have a number of tools at their disposal:

1. Prevention and risk management resources through the **Conservation Defense Center** and
2. Conservation Defense Liability Insurance through **Terrafirma Risk Retention Group LLC**.

I. Conservation Defense Center

The Conservation Defense Center is the hub of the national network of conservation defense initiatives. It functions in multiple ways with the single purpose of upholding conservation permanence including:

1. The Conservation Defense **Network** provides a forum to share information on legal issues, networking with private and public attorneys, law firms, law schools, appraisers, financial professionals and land trust professionals on conservation defense issues, legal education, and research on conservation defense issues.
2. The Conservation Defense **Law Library** has a large collection of legal materials on specific topics. It is a comprehensive conservation defense resource with information on cases, practical tips, law review articles, statutes, and tax code and sample documents. A search engine makes it fast and easy to find just the information you need to stay informed and in compliance. The Law Library is ideal for any attorney researching a difficult issue, tracking case law development or creating a winning argument in a legal challenge. Conservation Defense Network members review new documents and materials, such as Practical Pointers and sample templates, before adding to the Law Library.
3. **Find an Expert** lists experienced conservation attorneys and experts, searchable by state, by keyword or by name using the easy search engine.
4. **Legal education** for attorneys and law students is an essential part of the Center. Continuing education assists attorneys in the conservation field to have the necessary skills, practical on-the-ground experience, and expertise to provide the best possible advice and service to land trusts and land owners. Law school courses for law students, advanced courses for undergraduates and attorneys, and legal education for land trusts is also critical in order to uphold conservation permanence.
5. **Partnerships** are critical to deliver effective conservation defense services. Pro bono law firms available for conservation defense issues have assisted with research, professional articles, land trust guidance pieces, tax issues and legal challenges. Other nonprofit partners such as the Environmental Law Institute, Lincoln Institute of Land Policy and various Environmental Law Foundations partner with us on particular national issues.
6. **Shaping Conservation Law** helps formulate emerging issues related to conservation policy, legislative reform and regulatory reform at the state and federal levels, including federal tax compliance issues. The Alliance works closely with many partners to identify areas of collaboration and important trendsetting policy, legislative, regulatory and tax court needs.
7. **Prevention and risk management** is the best way for land trusts to uphold permanence and reduce costs. The Learning Center advances outreach, tools and technical assistance that will help prevent legal problems for land trusts including preparation for increased conservation defense, as well as courses, forums and information specifically developed to assist land trusts in their work to defend conserved lands. The Alliance will continue to emphasize prevention as a tool to strengthen conservation efforts. Conservation defense begins with good drafting and design, solid internal systems and sound governance.
8. The Conservation Defense **Fund** supports Alliance intervention in litigation involving precedent-setting legal challenges to conservation as part of pro-active defense initiatives. This Fund is available to the Alliance to assist with any conservation issue or holder that it evaluates as having a crucial legal challenge likely to set a conservation precedent. The Alliance uses the Fund to address conservation tax issues arising in Tax Court, Appeals Courts, or with the IRS.
9. The **Advisory Council** comprises sixteen diverse national conservation leaders and the Alliance board members serving on the Conservation Defense Committee. The Council advises the Alliance on critical conservation defense issues and initiatives.

10. Complimentary **Technical Assistance** from expert Alliance staff regarding conservation defense, legal issues, *Land Trust Standards and Practices*, governance, transactions, federal issues and tax. Call or write us. We can help you think it through and find resources.
11. Complimentary **Affiliate Membership** in the Nonprofit Risk Management Center for all Alliance member land trusts at <https://nonprofitrisk.org/affiliate-membership/>.

II. Terrafirma Risk Retention Group LLC

Terrafirma is a charitable risk insurance pool owned by participating land trusts that insures its members against the liabilities of defending conservation easements and conserved lands. Terrafirma can help cover legal and technical expenses incurred while protecting easements and conserved properties from legal challenges.

Many land trusts, even large land trusts, are struggling with capacity to provide sufficient stewardship services for their growing portfolios. Adequately addressing multiple expensive conservation easement challenges, third party trespass or challenges to land owned by a land trust is difficult. Everyone is at some degree of risk; some have higher risk. While large, experienced, well-funded land trusts may be better able to defend against challenges to their own conserved properties, they also bear the risk of failures of land trusts in their region or state or throughout the country that are not as well situated.

The Land Trust Alliance designed Terrafirma with insurance specialists, attorneys, and land trusts to help ensure lasting conservation. Terrafirma member land trusts own and manage the insurance program as part of their participation in the program. Since Terrafirma is insurance by and for land trusts, it specifically tailors coverage to meet their needs. A Claims Committee comprised of outside expert attorneys with land trust roots oversees claims management in collaboration with the insured land trust and its legal team.

Land trusts cannot know when they will need to go to court or mediation to protect an easement or conserved property, how long it may take or how much it may cost. Terrafirma removes risk and uncertainty by reducing a land trust's exposure to potentially high fees. Terrafirma coverage sends a clear signal that a land trust has the capacity to defend its easements and conserved lands, which can help deter violations and frivolous lawsuits. Participating land trusts also have access to a national team of experts and early assistance. Terrafirma is a safety net but not a substitute for sound judgment, solid systems and strong relationships. www.terrafirma.org

III. Please Call or Write

We are here to help land trusts with risk management, ideas on early dispute resolution, addressing legal challenges successfully, resources, finding the right form or template and being a sounding board.

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