

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

Many individuals and organizations may be interested in a given conservation easement: the easement holder, the landowner, other parties involved in the original real estate transaction, mortgagees, neighboring landowners, and an indefinite number of individuals who may benefit in any number of ways from the easement’s restrictive covenants that support the easement’s conservation objectives.

This guide addresses the question: who among these many parties may petition a court in a dispute over the easement or its management?

Standing Defined

Any time a person petitions a court to resolve a dispute, they must first establish that they have “standing” to do so. Standing is a legal concept that ensures a claimant has a sufficient stake in the outcome and connection to the matter to justify court involvement. Standing requirements vary for different types of legal claims. If a claimant cannot meet the applicable criteria for a particular claim, a judge can deny them access to the judicial system for a lack of standing.

In Pennsylvania, the basic standing requirements are defined by a traditional common law test to ensure that a claimant has a “substantial, direct and immediate interest in the subject matter of the litigation.”¹ The Pennsylvania General Assembly has the power to further regulate standing by statute. In some instances, statutes may expand the pool of possible litigants by creating rights and assuring standing for individuals who assert them.² In other instances, a statute may constrict the pool of eligible claimants that might otherwise be able to make out a claim under the common law test. As discussed below, the Conservation and Preservation Easements Act (the “CPEA” or the “Act”) is one such example.

¹ Milby v. Pote, 189 A.3d 1065 (Pa. Super. Ct. 2018).

²For example, see the Manufactured Home Community Rights Act (98.1 et seq.) (assuring standing for individuals harmed by violations

of a statute regulating the operation of manufactured home communities).

Likelihood of Having Standing in Regard to Conservation Easements

The remainder of the guide will explore in some depth the question of who does and doesn't have standing in regard to conservation easements. To generalize the exploration to follow, the following parties are likely to have standing regarding a matter pertaining to a conservation easement:

- The landowner and others with interests in the eased land
- The easement holder
- Third parties who are qualified to be holders and who are explicitly granted enforcement rights under the easement (their standing likely being limited to the scope of their enforcement rights)
- A person otherwise authorized by federal or state law and owners of coal interests on adjacent property

Again, to generalize, parties likely to be found to be without standing include any entity not listed above. So, for example, the following parties are unlikely to have standing:

- Owners of neighboring properties
- Community groups
- Family members of the original donor or seller of the easement

Standing in Conservation Easement Matters

With enactment of the CPEA, the General Assembly chose to regulate standing in regard to conservation easements, not leaving determinations of standing entirely to the courts (and the specific provisions, if any, regarding standing in the grant of conservation easement). Without the Act's standing limitation, Pennsylvania common law

principles may allow additional parties to attempt legal enforcement of an easement.³ The CPEA narrows the universe of parties eligible to bring legal claims affecting conservation easements. This brings a degree of certainty for landowners and easement holders, who might otherwise face vast and unpredictable litigation risk from parties with wide-ranging viewpoints and intentions—from well-meaning but likely uninformed people second-guessing the holder's easement management decisions to people who see an easement as simply a potential avenue for inflicting pain on a neighbor with whom they have a quarrel.

The CPEA's standing provisions only control for easements that meet the requirements of the Act. CPEA requirements include purpose, duration, and eligibility of the easement holder. Disputes over easements that do not conform to the Act may be adjudicated under common law principles, and without the limiting standing provisions of the Act. As a result, standing may be available to a broader group of possible claimants, provided they can meet the less-restrictive common law standing requirements described above. For a more detailed discussion of the Act, see *Guide to the Conservation and Preservation Easements Act*.

CPEA Limits Universe of People With Potential Standing

Section 5(a) of the CPEA provides that “[a] legal or equitable action affecting a conservation easement may only be brought by” seven categories of claimants, specifically (and quoting the Act):

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.

restrictions on the use of land if they can demonstrate that they are among the parties intended to benefit from the restrictions).

³ See Appeal of J. C. Grille, Inc., 124 A.2d 659, 181 Pa. Super. 456 (Pa. Super. Ct. 1956) (holding that third parties may enforce

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.

Numbers one, two, three, and seven capture persons with direct legal interests in the eased land, independent of the easement itself. These provisions ensure that the landowner, tenants, holders of mineral rights, and mortgagees can assert their respective rights in court if they come into conflict with the easement or its administration. Number six avoids potential conflict-of-laws issues by affording standing where necessary to avoid frustrating the application of state or federal law and affirms standing for the Office of the Attorney General to exercise its authority over the disposition of charitable assets, as discussed below.⁴

Standing for landowners, holders, and third parties with enforcement rights are discussed in more detail below.

Courts Have Discretion Within Limited Universe

Falling into one of the categories identified in Section 5(a) of the CPEA does not guarantee a claimant standing to bring an action regarding a conservation easement. Rather, the CPEA sets an initial bar that a claimant must meet before a court will proceed to determine whether the

claimant has sufficient connection to the matter affecting the conservation easement to have standing.

Landowner Standing

Landowner standing is mostly straightforward. The owner of land burdened by an easement has a clear and direct interest in the easement. If disagreements arise with the easement holder, courts are available to resolve them.

One important limit emerges when a single easement burdens multiple parcels with different owners. The Commonwealth Court has rejected a landowner's attempt to establish landowner standing to enforce an easement against the owner of a separate parcel burdened by the same easement. As discussed below, the Court denied the same landowner's attempt to argue standing as holder of a "de facto" third-party enforcement right.

Standing for Holders

Easement holders have standing so long as they meet CPEA requirements, and the grant of easement otherwise conforms with the Act. Holders must be either public entities (such as municipalities and public agencies), or tax-exempt charitable nonprofit organizations formed for conservation purposes specified in the Act.⁵ In this guide, these private organizations are referred to as "land trusts."

Grants of conservation easement may include provisions pointing to future holders. CPEA holder standing applies only to current holders, not future ones, though successor or "backup" holders may be found to have standing as a

⁴ Pennsylvania case law lacks examples of standing achieved via category six. However, for an example of attempted use of the category, in *Schwartz v. Chester Cnty. Agric. Land Pres. Bd.*, 180 A.3d 510 (PA. Commw. Ct. 2018), a neighbor of eased land asserted standing under CPEA Section 5(a)(6) on the basis that the easement-holding county agricultural board's response to her complaint gave rise to a right to appeal under the Local Agency Law (2 Pa. C.S. §§ 101 et. seq.). The Court found no standing because the neighbor could not satisfy the requirements of the Local Agency Law.

⁵ The purposes and powers of an eligible conservation easement holder under the CPEA 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, 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.

holder of a “third-party right of enforcement,” as discussed below.

Standing for Those With Third-Party Rights of Enforcement

The CPEA at Section 5(a)(5) allows standing for holders of “third-party rights of enforcement.” This describes an entity “which, although eligible to be a holder, is not a holder,” that has a right under a conservation easement to enforce one or more of its terms and has accepted that right in writing.⁶ These rights can arise in a number of ways.

Beneficiaries

The *Model Grant of Conservation Easement and Declaration of Covenants* uses the term “Beneficiaries” to describe parties other than the landowner and easement holder who receive a right under a grant of conservation easement. Generally speaking, a beneficiary will be entitled to some degree of standing under CPEA Section 5(a)(5).

Standing for a beneficiary will likely extend only to the specific enforceable rights provided to the beneficiary by the grant of easement. For example, a default provision of the Model Grant provides all beneficiaries with the right to monitor the performance of the holder and petition a court to appoint a replacement holder if necessary. Without the granting of additional rights, a beneficiary will likely be found to have standing to assert this right, but not to pursue other claims, such as direct enforcement of easement terms against the landowner.

A grant of conservation easement may go further in granting rights, for example, providing a beneficiary the right to approve easement amendments; in this case, the beneficiary can be reasonably expected to have standing in regard to a conflict over a potential amendment. Likewise, if the grant provides the beneficiary the right to exercise the holder’s rights if the holder fails to do so, the

beneficiary can be reasonably expected to have standing in regard to exercising these rights. For a more detailed discussion of drafting considerations in granting rights to beneficiaries, see the supplemental provisions to the *Model Grant of Conservation Easement and Declaration of Covenants* (section titled “Providing for Beneficiaries of the Grant”).

Backup Holders

A backup holder is a third party that may assume the role of holder upon the occurrence of some future event—typically the dissolution or failure of the original holder. As discussed more thoroughly in the guide *Beneficiaries and Backup Holders*, drafters have options when writing a backup holder provision. The language used will affect whether the named entity has standing as a third party with a right of enforcement.

The following examples illustrate how differences in backup holder clauses may or may not result in standing for the backup holder:

Example of Backup Holder Clause Resulting in No Standing Under CPEA

If a court of competent jurisdiction determines that holder has ceased to exist or failed to enforce this conservation easement, the parties hereby identify [name of backup holder land trust] as a suitable and recommended successive holder.

In this example, the backup grantee land trust is merely named as a recommendation to the court but has not been granted any enforcement rights; thus, it has no standing on its own.

Example of Backup Holder Clause Resulting in Standing Under CPEA

Owners and Holder grant to [name of land trust] (“Backup Holder”) the right to petition a court of competent jurisdiction to appoint Backup Holder as holder of this easement should Holder fail to

⁶ This sentence quotes and paraphrases the CPEA definition of “third-party right of enforcement,” together with CPEA subsection

4(c), which requires acceptance by the third-party for the right to be effective.

uphold and enforce in perpetuity the restrictions under this grant.

In this example, the backup holder has been granted a specific enforcement right, albeit a limited one, to enforce against holder its obligations to enforce the easement. Thus, it likely has standing on its own to petition a court to transfer the easement in furtherance of the easement's conservation objectives. Note that this clause as written does not result in standing for the backup grantee to directly enforce the easement directly against the landowner, unless and until it is appointed as holder in the original holder's place.

Example of a Clause Providing for a Shifting Executory Interest

Landowners grant and convey a conservation easement on the premises to Land Trust A but if Land Trust A ceases to exist or fails to enforce this conservation easement, then to Land Trust B.

In this example, Land Trust B will become the holder by operation of law upon the dissolution of Land Trust A. Upon the occurrence of one of the triggering conditions, Land Trust B becomes the holder by operation of law and may assert standing as the holder of the easement.⁷ But until that condition occurs, Land Trust B has no right to enforce any provision of the easement, and is without CPEA standing, except to bring a quiet title action to affirm the occurrence of the triggering event and its succession as holder.

Implied Third-Party Rights of Enforcement Unlikely

The Commonwealth Court has rejected claims of “*de facto*” third-party rights of enforcement, holding that a third-party right of enforcement must be explicit on the

face of the document or formally conveyed by the easement holder.⁸

Standing Regarding Easements Predating CPEA

Section 7 of the CPEA provides for its application to easements recorded before the effective date of the statute, so long as retroactive application does not contravene the constitutions of the United States or Pennsylvania. In *Naylor v. Bd. of Supervisors of Charlestown Twp. & French & Pickering Creeks Conservation Trust*, the Commonwealth Court did not hesitate to apply CPEA to resolve questions of standing, despite taking a more restrictive approach to retroactive application of other provisions of the Act.⁹

Implications for Easement Management

Public Policy Favors Holder Management

The CPEA, in limiting the universe of those with potential standing, evidences a strong public policy to leave questions pertaining to appropriate easement management to the easement holder—whether a public body or private land trust—as well as any third parties who can qualify as holders and are specifically identified in the grant as having enforcement rights regarding the easement.

Recourse for Parties Without CPEA Standing

Parties without CPEA standing are not without recourse when they observe instances of possible easement mismanagement. The Office of the Attorney General for the

⁷ Note that subjective triggering criteria such as “fails to enforce” may be difficult to measure, and a holder of a shifting executory interest like this will likely seek court involvement to affirm the occurrence of

the condition. For a more detailed discussion of shifting executory interests, see the guide [Beneficiaries and Backup Holders](#).

⁸ See *Naylor*.

⁹ See *Naylor*.

Commonwealth of Pennsylvania (the “Attorney General”) is charged with oversight of charitable organizations. Individuals concerned about a conservation easement may bring their concerns to the Attorney General and request investigation and oversight.¹⁰ 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.¹¹



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¹⁰ 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.

¹¹ 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.