

# Land Trust Alliance *Fact Sheet*



## Backup Grantees

It is vital that every land trust consider what will happen to its assets if the organization ceases to exist or can no longer steward and administer its easements. Land trusts should have a contingency plan for all of their easements in case of such events.

One strategy is to include backup or contingency provisions in the easement. If a backup grantee is listed in the easement, the land trust secures prior consent of the backup grantee to accept the easement. To ensure that a backup or contingency holder will accept an easement, the land trust has complete and accurate files and stewardship and enforcement funds available for transfer.

### Backups Grantees/Executory Interests

While there are variations on this practice, a backup or “executory” interest grantee is empowered to enforce an easement if the original grantee fails to do so, or to take over an easement if the original grantee can no longer manage it. Some termination provisions allow the backup to take over the easement simply by registering a new deed; others require that a court must first approve the substitution after finding that the primary land trust has failed in its duties.

Similarly, the easement may give another organization the power to enforce the easement with the primary holder or alone if the primary grantee fails to enforce it. However, the easement title remains with the primary easement holder. Unlike reserving the right to transfer a conservation easement in the future, enlisting and naming a backup grantee

in an easement requires that grantee’s consent and participation.

A land trust must make a provision in its corporate charter for distribution of its assets in case it dissolves; this provides some protection for the land trust’s conservation easements, but it does not assure that the easements will be transferred to an entity that has the commitment and resources to protect the land’s conservation values. Naming a specific backup holder—a “preferred assignee”—in the easement can avoid delay and assure continuity.

A backup holder is usually empowered to take over an easement if the original holder can no longer manage it. The original holder has the primary responsibility for holding and monitoring the easement, and the backup may keep on file a second set of all the documentation relevant to the easement, so that it is prepared to act if and when the primary holder can no longer manage and defend the easement. Without a specifically designated backup holder, the state’s attorney general usually oversees distribution of a dissolved nonprofit’s assets, and the courts can ensure that the purposes of the easement are carried out in the event of the original organization’s demise. Holders can avoid this step by naming an appropriate backup.

### Benefits of Enlisting a “Named” Backup:

**Greater defense resources:** A primary reason to use a backup holder is to draw on the enforcement resources of another entity. If the backup organization has a vested legal interest in the easement, it has the legal standing to defend the easement in court. And if the backup is a public agency, the

agency's stability over the long term and its financial and legal backing for enforcement actions can be reassuring.

**Strong selling point to landowners:** Some landowners may prefer to grant an easement to a local organization or agency when a larger entity can be a backup. The more assurance landowners can be offered that their land will be protected forever, the more inclined they may be to grant an easement to a less experienced organization.

**Protection against eminent domain:** For nonprofit easement-holding organizations, using a government agency as a backup may provide protection against eminent domain or condemnation. Private organizations cannot prevent public takings of their properties. Federal property interests, however, usually cannot be condemned by a state, and property interests held by a state agency usually cannot be condemned by a local government or by another state agency.

**Protection of the easement in the event of dissolution:** If the primary holder ceases to exist, the backup would assume all rights and responsibilities. And as stated above, with a named backup, the holder can be assured that its easements will be transferred to an appropriate holder in the event the holder organization ceases to exist.

Backup holders should have policies that both guide which easements they will accept and ensure that they have the resources to adequately take care of easements they might receive.



## Information Resources

The Learning Center resources are available to volunteers and staff of Land Trust Alliance member land trusts and partners, and to individuals donating \$250 and above.

Land Trust Standards & Practices -- Practice 11G: Contingency Plans/Backups and sample documents – [http://learningcenter.lta.org/objects/view.acs?object\\_id=15162](http://learningcenter.lta.org/objects/view.acs?object_id=15162)

Land Trust Standards & Practices -- Practice 11H: Contingency Plans for Backup Holder and sample documents – [http://learningcenter.lta.org/objects/view.acs?object\\_id=15163](http://learningcenter.lta.org/objects/view.acs?object_id=15163)

## Publications

The Land Trust Standards and Practices Guidebook: An Operating Manual for Land Trusts Volume 1 and Volume 2 Printed Publication - (\$49.95 members / \$59.95 others) [http://iweb.lta.org/Purchase/ProductDetail.aspx?Product\\_code=SPGUIDE](http://iweb.lta.org/Purchase/ProductDetail.aspx?Product_code=SPGUIDE)



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