

**A12. Trending Topics in Fee
Land and Conservation
Easement Stewardship**

Friday, October 12 | 10:30 a.m. - Noon

Room 411/412

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Practical Pointers Series

EASEMENT VIOLATION PROCESS DECISION TREE

1. Has some actual damage occurred on the land conserved?
 - No: It is a technical lapse and should be addressed with information and education.
 - Yes: Go to #2.

2. Is it directly detrimental to the stated purposes of the easement and the resources conserved?
 - No: Address with information and education; check with attorney to ensure correct interpretation.
 - Yes: Go to #3.

3. What is the severity of the damage?
 - Minor: Address with information and education and/or restoration or similar solution; check with attorney to ensure correct interpretation.
 - Moderate: Evaluate the extent and the permanence of the damage in determining a *proportional response* that may be a mix of education and some adjustments.
 - Major: Evaluate the extent and the permanence of the damage in determining a *proportional response*. Remediation, mitigation, exchanges and other actual remedies likely to be required.

4. If a moderate or major violation, do mitigating circumstances exist?
 - No: Continue to #8.
 - Yes: Go to #5.

5. Do the mitigating circumstances suggest moderating the land trust response?
 - No: Continue to #6.
 - Yes: Go to #7.

6. Do the mitigating circumstances suggest increasing the land trust response?
 - No: Continue to #8.
 - Yes: Go to #7.

7. Increase or decrease the land trust response as suggested by the mitigating circumstances. Litigation is a last resort. Consider alternative remedies that uphold conservation, comply with all laws and do not conflict with IRS regulations.
8. Devise a proportional response to the actual damage directly and adversely affecting to the stated purposes of the easement and the resources conserved. Use these general tools: education, negotiation, discretionary approval used correctly, interpretations, remediation, exchanges, amendments used correctly, mediation, enforcement by a government agency, and litigation.

RESOURCES

- *Managing Conservation Easements in Perpetuity*, Leslie Ratley-Beach (Land Trust Alliance, 2009). Available on [The Learning Center](#) and at <http://www.lta.org/publications>

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