

Connecticut Land Trust Service Bureau

Practice Note #11: Insurance

As the owners of land that may be open to the public, Connecticut land trusts are faced with considerable potential liability. Many land trust properties contain what are known as “*attractive nuisances*.” These are natural features that can invite high risk forms of recreational use, i.e., ponds, rivers or streams with swimming holes or rope swings, high rocky ledges that attract climbers and sunset revelers, dangerous caves, etc.

Imagine any of the following:

- ◆ *a visitor falls off a ledge while participating in a trust-sponsored hike....*
- ◆ *a volunteer helping to clear invasive brush injures another with a saw....*
- ◆ *several members get food poisoning from a dish served at a land trust picnic....*
- ◆ *a large tree on land trust property falls onto a public road, causing an accident....*
- ◆ *an old hazardous waste dump is uncovered on land trust property....*
- ◆ *a landowner sues the land trust for breach of a complex sales contract....*

Any of the above could result in a legal action against the land trust for recovery of damages. If successful, a plaintiff would look to the trust’s assets as a source of payment, including land, bank accounts, endowment funds, etc. Once these were depleted, a plaintiff could also seize future income, *making it difficult for the trust to continue its work.*

Land trust directors owe their highest “Duty of Care” to invitees. If the accident were the result of some gross negligence on their part, they might be personally liable. Plaintiffs often name as many parties as possible in a suit, to increase the likelihood of recovery from somewhere. *It is not unreasonable to assume that a lawsuit against a trust would also name its directors.* Even if the trust is not at fault, **the legal fees and costs incurred in defense would easily deplete the modest bank accounts of most Connecticut trusts.**

In its publication, Starting a Land Trust, the Land Trust Alliance notes that “the first defense against potential liability problems is to anticipate them and eliminate or reduce them.” Such **risk management** begins before a property is even acquired, through the *identification of potentially dangerous or unsafe features, hazardous wastes, etc.* Once a property is acquired, risk management continues through regular monitoring and inspection and, where necessary, maintenance. Under good risk management, **trusts should have a management plan for their properties that (1) identifies potentially dangerous features, (2) defines steps to reduce associated risks (e.g. signs, removal, etc., and (3) includes regular inspection and monitoring.**

Title 52 of the Connecticut General Statutes (§ 52-557f – § 52-557k) offers some immunity from liability to Connecticut landowners who make all or part of their land available to the public for recreational purposes without charge. *This does not apply, however, to situations of “wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.”* Though many Connecticut land trust properties contain attractive nuisances, **in practice, few of these are posted with warning signs.** Even when they are, the signs can be regularly removed by vandals.

Title 52 also offers **immunity from liability to volunteer directors, officers and trustees of non-profit land trusts**, “for damage or injury...resulting from any act, error or omission made in the exercise of such person’s policy or decision-making responsibilities if such person was acting in good faith and within the scope of such person’s official functions and duties, unless the damage or injury was caused by reckless, wilful or wanton misconduct (§ 52-557m).” This highlights the importance of good decision-making processes and record-keeping practices within the trust, as well as board member familiarity with their role and responsibilities (see Practice Note #2).

In short, while state and federal recreational use statutes can reduce the liability of land trusts and their directors, they do not necessarily eliminate it, nor do they prevent a lawsuit.

Land trusts can protect themselves from liability by purchasing insurance, including General Liability and Director’s & Officers Liability (DOL). *Unfortunately, insurance rates have nearly doubled in the last two years, causing many trusts in the state to scale back their coverage, or consider foregoing it all together.*

In spite of the rising costs, some level of coverage is highly recommended.

Land trusts in Connecticut can purchase insurance at group discount rates if they join the Land Trust Alliance. The membership fee, which is based on the trust’s annual budget, provides many additional benefits (contact LTA for more information or visit www.lta.org). As of August 2003, approximately 100 Connecticut land trusts were participating in the Conserve-A-Nation Insurance Program.

Because of their limited budgets, many Connecticut land trusts have dropped their DOL coverage. Nationwide, most DOL claims for nonprofits come from employment-related lawsuits, though as noted, directors can still be named in lawsuits stemming from other types of claims against the trust. DOL policies are not all alike and can differ within a carrier. Portions of the policies are often difficult to interpret and should be read carefully, preferably by an attorney. Some directors can arrange for coverage under their personal homeowner policies. Whether or not a trust needs DOL depends on its size and the nature of its activities. Each should carefully analyze the need and decide on a case-by-case basis. For some trusts, though, it might be hard to keep a good person on the board if DOL coverage is not provided.

Trusts that make heavy and regular use of volunteers should consider additional Volunteer Workers Accident coverage, or purchasing a rider covering volunteers at special events.

The degree to which an easement holder is liable for claims on a property can be related to how much control they exercise over the property, especially in the area of public access. Where considerable control is exercised, easement holders could ask the landowner to name them as an additional insured on their policy, as again, the trust may be named in the lawsuit and would have to defend itself.

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