

Legal Instruments for Acquisition of Rights-of-Way

There are several legal instruments that may be used to transfer ownership of property or interests in property. They may be temporary and have specific termination clauses, as with a lease or access agreement, or they may convey permanent rights to the land, as do conservation easements and fee simple title. The most important instruments are listed here and described briefly below:

Titles include warrants, deeds, and quitclaim deeds, and confer all rights to a property except certain rights, such as mineral rights or rights-of-way across the property. Titles to land are usually acquired “in fee simple”, through contribution or outright sale.

When your greenway or trail organization acquires title, name a reliable and well-managed land trust or conservancy to hold reversion rights and be the “heirs” should your organization disband at some future date. This will continue the protection of the corridor.

Easements are legal documents conveying ownership and control of a certain interest, right, or tangible element of a property to a second party, while the owner retains other rights to the land. In a conservation easement, the owner sells the rights to develop the land to a land trust or conservancy while retaining the right to continue living on the land. In an agricultural preservation easement, a farmer sells all land use rights except farming to assure that future owners of the land are bound by the constraint.

In general, a greenway organization will attempt to acquire conservation easements that prohibit development and certain other land use practices across

all or part of a property. A trail organization will seek to purchase a ROW, perhaps owned by a railroad or utility company, to use as a trail corridor or may seek to obtain an easement creating a new ROW.

Access and use agreements between a land owner and a greenway or trail operator specify how a portion of a property may be used. A landowner, for instance, may permit a hiking trail to be developed on his or her property but continue to use the property for forestry or farming. The agreement should contain a termination clause that may specify automatic termination on some date, termination if the landowner sells the property, or termination for other cause. It can detail obligations the greenway and trail group takes on, such as litter removal, security patrol, and trail maintenance. The agreement may also limit use to certain seasons, such as winter only. It should also note accepted and expressly forbidden activities.

A landowner who opens his or her land for recreational use, without charging a fee is protected from liability by Virginia Code 29.1-509 and supporting case law. The landowner may also be indemnified under a greenway or trail organization’s insurance program.

Leases convey almost all rights, control and liability for a property to the lessee for a specified number of years and may provide the landowner with compensation from the lease. Leases are usually long-term, with 25 years and 99 years being typical durations, although perpetual leases are preferred. There are creative ways leases can be used; for example, a farmer can sell his or her property to a greenway group, but lease back the rights to continue farming. A number of farms operate this way in the Appalachian Trail Corridor.