

Frequently Asked Questions – Trails & Property Owners

NOTICE: Although some legal concepts are referred to in this document (easements, liability, etc.), it is expressly not to be considered legal advice. For further information, any parties concerned with these areas should consult a qualified legal expert.

Liability

Am I liable if someone gets hurt while using a trail on my property?

In almost all cases, no, the property owner does not face any liability if someone is injured while recreating on the property owner's land. This protection is spelled out in the Recreational Use Statute of your state. As long as the property owner does not act in a "willful or malicious" manner to not warn users of a known danger on the property. Additionally, and importantly, this protection from liability exists only when there is no fee charged for the recreational use of the property.

What if a recreation user gets bitten by a rattlesnake?

The Recreational Use Statutes mentioned above state that it is the recreational user who must take responsibility for the dangers and risks that are inherent in outdoor activities. In some parts of the country, that includes the presence of rattlesnakes. The property owner is not liable for any such injury.

Privacy

How can the privacy I enjoy in and around my residence be maintained if a trail is on my property?

If a trail is routed near an existing residence, the trail designer or entity responsible for the trail should make every effort to minimize any reduction of privacy to the residence. These efforts may include re-routing the trail or installing some sort of visual barrier between the residence and the trail. Such a barrier may be a fence, dense plantings, a berm, or other means.

Littering, vandalism, trespassing, and other illicit activities

Won't a trail make it easier for people to come on to my property and dump garbage, do drugs, or tear the place up?

While a trail may open up previously unavailable access to a property, people who are engaging in illicit activities are more likely to use public or private roads than trails. There are many studies that have looked at the occurrence of crimes on trails. Most have found there is no significant incident of increased crime due to a new trail. Actually, most studies have found

that improved access to an area (with an attractive trail) has lowered illicit activities that previously had more limited access. In effect, a trail may act as a mobile neighborhood watch amenity – the legitimate users can help keep an eye on the property.

While littering can be a problem, it can be addressed by posting signs specifically asking people not to litter and/or to pick up litter they may see along the trail. The signage may be the often-used phrases, “pack it in, pack it out” or “take only pictures, leave only footprints.” Another option is to schedule occasional clean-up events to get more people out on the trail to help take care of it. Generally, it is not recommended to place trash cans along the route because they require additional time and effort to keep emptied and they may get filled to overflowing.

Maintenance

Am I responsible for the maintenance of the trail that's on my property?

No. Trail maintenance will be the responsibility of the town, county, or the trails committee. Volunteer trail maintenance or clean-up days that are open to community members may be an option. The details of the trail maintenance will be worked out among these entities and the schedule will be provided to the property owners. Any issues between the normal use of the property and scheduled maintenance will be discussed and mutually-acceptable solutions will be developed.

Easements

I've heard about easements. What are they? Is it necessary to have one?

Easements are legal attachments to a property's deed that may allow or disallow a particular use or uses. For instance, a conservation easement restricts the things that may be done on or to a property. Such an easement may prohibit the subdividing of a property in order to maintain it as a working farm or ranch. A conservation easement would not be needed for allowing a trail on one's property. Instead, an access easement would be the proper instrument.

An access easement allows a third party to use a portion of a property for a specific use. Such easements may allow a gas line, electric power lines, or even a road to go across a property. Within this category would be a public trail easement. A public trail easement may include restrictions on the type of uses allowed on the trail, the time of year the trail may be used, and specific dimensions and location of the permitted trail. That is, how wide of an area may be affected by the trail and its construction and where on the property the trail may be placed.

It is recommended that the property owner and the town work with a land trust or other entity with experience in trail easements to write one up that addresses all of the concerns of all concerned parties.

Do easements create a permanent restriction or permission?

Depending on the purpose of the easement and how it is written, the easement may or may not be permanent. A conservation easement that is intended to protect a particular use, species, or habitat would normally be a permanent addition to a property's deed. These protective conditions are often monitored by a land trust to ensure the property is managed in the manner agreed upon in the easement.

Access or trail easements may be written in a way that makes them less than permanent. For instance, some trail easements are seasonal: They may only allow access for winter or snow-based activities such as Nordic skiing, snowshoeing, or snowmobiling. Other access easements may list a condition or threshold that may trigger a temporary stop to the access until the condition is corrected or may make the easement void.

Instead of using a more formal document like an easement, the property owner may consider creating a memorandum of agreement with the organization that desires to manage a trail on their property. A memorandum of agreement (MOA) may have the same restrictions or permissions as an easement but it is easier to revoke than an easement and is normally not recorded in the public record. Like an easement, the property owner and third party come to consensus on exactly how the property may be used. These items are clearly listed in the MOA and all affected parties sign the document to show their agreement and commitment to implementing the access or use. If, for whatever reason, any party to the agreement wishes to terminate their participation, they notify the other parties in writing and the agreement may be nullified in the amount of time set forth in the MOA (often as short as 30 days).

Effects on agricultural use of property

How will allowing a trail on my property affect my agricultural uses?

Any agreement, whether verbal or written, should effectively address any particular needs to maintain the normal and profitable use of the property. The limitations on access may be seasonal or tied to operations such as moving livestock from one area to another. The design of the trail corridor should take any such needs into consideration. This may be through additional fencing to separate the trail from agricultural operations, self-closing gates, or routing the trail to minimize any potential conflicts. Other mitigation options may involve the management of the trail use by temporarily re-routing the trail or even closing access for a limited time to allow the operations to be completed.

Who is responsible for any damage to my livestock or agricultural equipment and buildings?

Ultimately, the person who has caused any damage to property or livestock is responsible for their actions. However, the issue here is how the property owner will be reimbursed for any damage or losses created by trail users. This issue should also be addressed within the access easement of memorandum of agreement.

Property values

What impact will a trail have on the value of my land?

Proximity to a trail has a positive impact on the value of residential property, both in terms of monetary value and in increased quality of life. This has been clearly shown in numerous studies conducted by the National Park Service and the National Association of Realtors. The effects on the value of agricultural lands is less clear and has not been the subject of as much research. Part of the reason for this is that agricultural land is assessed and taxed differently from residential or commercial property, making comparison of small changes difficult. However, there are many miles of trail in active agricultural areas across the country; a well-designed trail and its effective management should have little or no negative impact on the operations of a working property.

Applicable legal citations

Montana Recreation Use Statute: 70-16-302 (Montana Code Annotated)

Montana Equine Liability Limitation Statute 27-1-725 (Montana Code Annotated)