

Understanding Easements

When purchasing property make sure you understand the nature of and are aware of any easements existing over the property you wish to purchase. Sometimes, easements can actually benefit the property, but sometimes the existence of an easement may make it impossible for you to make that improvement or alteration that you planned.

An easement generally involves one property owner granting certain rights over part or all of his or her property in favor of another (usually adjoining) for a designated purpose. Examples of common easements include easements for rights of way; a right to drain water, storm water or sewage; and utility easements - telephone, gas or electricity supply.

If two neighbors decide that one will grant an easement in favor of the other then it is vital that the document is properly drafted, signed and recorded with the office of the County Recorder in which the property is located.

PRINCIPAL TERMS OF EASEMENT AGREEMENT

- Exact nature and terms and conditions of easement(s).**
- Exact area which is to be subject to the easement.**
- Price (consideration) if any, to be paid by the party receiving the benefit of the easement.**
- Timing - when the easement is to be granted.**
- Who pays the legal or surveying or land transfer costs.**
- Confirmation that the easement stays with the respective properties forever and that the easement document includes subsequent property owners and heirs.**

However, some easements don't have to be in writing. Examples of such easements include prescriptive easements, which can result from continuous use of property, without permission of the owner, over a period of time.

If your neighbor had made a practice of crossing your property to get to his property for at least seven years, and you knew about it but did nothing to prevent it, he could acquire a prescriptive easement to continue to do so.

Ownership rights of property can be impacted by an easement, but the public and/or private parties benefit from the affirmative use of land for roads, power lines, etc due to the additional freedom of movement, and an easement generally does not offset marketability.

Remember that every situation is different and if you have any concern about your rights as an owner or as a purchaser, you should consult your attorney.



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