



## Understanding Easement

### What is an Easement or Rights-of-Way?

An easement is the right to use another person's land for a stated purpose. It can involve a general or specific portion of the property while a right-of-way is a type of easement that gives someone the right to travel across property owned by another person. While granting rights, both have the effect of partially restricting an owner's use of those portions of land affected. For example, if you own property and a utility company has a main gas line passing under your land, it is likely that they will have a registered easement that will guarantee them access to the line and restrict uses that would hamper access or cause safety concerns.

Easements	Rights-of-Way
<ul style="list-style-type: none"> <li>• Access roads</li> <li>• Pathways/walkways               <ul style="list-style-type: none"> <li>• Utilities</li> </ul> </li> <li>• Right to park</li> <li>• Right of light</li> <li>• Right to commit a nuisance (Noise, dust, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Utility corridors</li> <li>• Power lines</li> <li>• Sewer/water lines</li> <li>• Gas/oil transmission lines</li> </ul> <p>Note: Rights-of-way are often used for energy and municipal-related easements.</p>

Easements and rights-of-way are usually registered on the title to the property. They "run with the land" and are automatically transferred from one owner to another as the land is sold. Easements remain on the title until the holder of the easement discharges their rights from the certificate of title. Either may be removed with the consent of the agreement holder or by judge's order. An argument for removal must be based upon proof that the easement is no longer needed.

### How does an easement affect the person who grants it?

The landowner who grants an easement usually cannot build structures within an easement area or use fencing that would hinder access. Before your buyers purchase property you should determine where all easements are located and what restrictions apply.

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### **Who maintains the property subject to an easement or right-of-way?**

Maintenance of the property is the responsibility of the landowner. If the holder of the easement or right-of-way causes any damage, they must restore the property to the original condition or pay damages. Structures owned by the holder of the easement are not the responsibility of the landowner. The holder of an easement is not required to pay for damages to a landowner's improvements that are located on the easement area contrary to the agreement.

### **Does a landowner get paid for an easement or right-of-way?**

The landowner granting the easement will receive a payment (\$1.00 minimum) to make the agreement legal. Any other compensation is subject to negotiation between the landowner and the company or person requesting an easement or right-of-way.

### **Will a building permit include information about easements?**

No! All landowners should check the title for any easement or right-of-way agreement prior to undertaking any major construction or alteration to their property. It is the landowner's responsibility to know!

### **Are there penalties for locating buildings or improvements on land subject to an easement or right-of-way?**

The landowner may be faced with all costs of removal and any associated damages resulting from unauthorized location of improvements on land that is subject to an easement or right-of-way.

### **Will an easement or right-of-way affect the value of property?**

It's possible. Most restrictions on property use are based on either access or safety. Some of the restrictions may be negotiable, while others may be specified by government regulation and are non-negotiable. Restrictions may affect a significantly larger portion of the property than the area defined in the easement or right-of-way agreement. Consider the example of high tension power lines running through an easement. Resale values may be affected since many people feel that living too close to power lines is a health risk. Lastly, some buyers may simply not like the idea that others have a right to use the land in some way.

### **How does an easement or right-of-way affect a real estate transaction?**

It's very important that buyers know where easements are located and what restrictions accompany them. Once determined, the buyer can evaluate the effect that they'll have on enjoying the property, building structures or even planting gardens. Encroachments into easement boundaries may have to be remedied and may affect the buyer's willingness to conclude the sale.

**Easement Tip:** Don't assume that because an easement is not currently being used it will never be used. As long as an easement is a part of a deed there's always a possibility that the individual who benefits from it will decide to enforce it. Talk to an experienced real estate attorney to find out how and when an easement can be terminated.



# CHICAGO TITLE