



# IMPORTANT EASEMENT INFORMATION

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it's definitely worth being concerned about encroachments, especially in situations where someone is using a small portion of their neighbor's property without permission. Even if the neighbor is currently okay with it, there's no guarantee that they'll continue to be permissive in the future. It's definitely a problem that needs to be addressed prior to close of escrow. This is where property easements come into play, as they provide legal permission for someone to use a portion of another person's property for a specific purpose. It's important to understand the details of any easements that may be relevant to your situation, as they can impact your rights and obligations as a property owner.

## **The seller must establish the following:**

- ✓ The use was visible, open, notorious (i.e. that the neighbor knows about it)
- ✓ There was never expressed permission
- ✓ The use was continuous for at least five years

## ***If the seller cannot establish these elements the use may constitute an encroachment over the boundary line and a trespass.***

Never assume that a neighbor will continue to allow the encroachment. Unless a prescriptive easement is legally confirmed, and recorded, the neighbor could always file a complaint, force the buyer to remove the encroachment and bar your client from crossing the actual property boundary line. Of course, subject to your client's consultation with an attorney, there are some options:

- Either the seller, if the issue is discovered prior to close of escrow, or the new buyer, if after close, could negotiate a settlement or title in return for compensation.
- Or, they could agree that an easement will never be granted, but that the neighbor will give revocable permissions (a "license") to use the property.

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## **WHAT IS AN EASEMENT?**

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.

Contact us with any questions: