

Easements – The Basics in Real Estate

This guide covers the basics of easements, the different types, how they affect property rights, and what to look out for in real estate transactions.

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A Comprehensive Guide by The Housing Assistant



Introduction

Easements are a common element of real estate that allow one party to legally use another's land for a specific purpose. Understanding easements is essential in home buying, lending, title review, and land development. This guide covers the basics of easements, the different types, how they affect property rights, and what to look out for in real estate transactions.

1. What is an Easement?

An easement is a legal right to use another person's land for a specific, limited purpose. It does not transfer ownership of the land but grants access or usage rights.

- The land that benefits from the easement is the dominant estate.
- The land burdened by the easement is the servient estate.

**THA Tip: Easements are commonly recorded in public land records and should be reviewed in title reports.

2. Types of Easements

Appurtenant Easement:

- Tied to the land and transfers with property ownership.
- Example: a shared driveway between two homes.

Easement in Gross:

- Belongs to an individual or company, not a property.
- Common with utility companies (e.g., power lines, water lines).

Prescriptive Easement:

- Created through long-term, continuous, and unauthorized use of another's land.

Easement by Necessity:

- Granted when access to a property would otherwise be landlocked.

THA Insight: Verify easements with your title company or attorney before closing.

3. Easements and Title Reports

Title searches will typically list all recorded easements in the Schedule B section of the preliminary title report.

- Utility and access easements are the most common.
- Review the map or legal description to determine location and scope.
- Undisclosed easements may delay closing or limit future development.

THA Reminder: Work with the title officer to interpret recorded documents and exceptions.

4. How Easements Affect Property Use

Easements may limit what a homeowner can build or where structures can be placed.

- Encroachments into easement areas can lead to legal disputes or mandatory removal.
- Maintenance responsibilities vary depending on the type and parties involved.

THA Note: Always check for easements before fencing, landscaping, or building additions.

5. Removing or Modifying Easements

While not always easy, easements can sometimes be:

- Abandoned – If unused for an extended period.
- Terminated – By agreement of both parties.
- Modified – Through a formal amendment or legal action.

All changes should be recorded with the county to protect future buyers.

THA Caution: Legal counsel is strongly recommended when modifying or disputing easements.