

**EASEMENTS
&
WHO'S
RESPONSIBLE**

Easement: A right to cross or otherwise use someone else's land for a specified purpose

What is an easement on a property?

Properties have what's known as an "**easement**," otherwise known as a "right-of-way". **Easements** can be granted to another person, such as a neighbor, or to an entity, such as an electric and gas utility. A property **easement** is generally written and recorded with the local assessor's office.

What does it mean when there is an easement on your property?

An **easement** is a **property** right that gives **its** holder an interest in land that's owned by someone else. It's common for people to lack a clear understanding of easements and the numerous legal problems that can arise in **their** creation, interpretation and implementation.

Definition of a Property Easement:

An **easement** is a legal right to use another's land for a specific limited purpose. In other words, when someone is granted an **easement**, he is granted the legal right to use the **property**, but the legal title itself remains with the owner of the land.

What is a right of way easement?

A **right of way** is an **easement** that allows another person to travel or pass through your land. The most common form of **right of way easement** is a road or path through your land. The **right of way easement** road is meant to benefit a particular person, or another parcel of land not owned by you.

Who owns a utility easement?

The **property owner** owns all of the land including the **utility easements**. However, **utilities** have a right to access that portion of land which has been designated a **utility easement**.

What is a drainage easement?

A **drainage easement** is a part of your property where the City has limited right of access and/or use. Generally, you cannot make any improvements in a **drainage easement**. That means no fences, sheds, walls, trails or buildings. You should avoid planting trees or much landscaping as well.

What are easement rights?

An **easement** grants other designated people the right to specific types of access. **Easements** can be granted to another person, such as a neighbor or to an entity such as an electric and gas utility. A property **easement** is generally written and recorded with the local assessor's office.

An easement gives the easement holder a non-possessory interest in the grantor's land and allows the easement holder to use the grantor's land for a specific purpose. Once an easement has been granted, the easement holder may not expand the use of the easement and the grantor may not interfere with the easement holder's use of the easement.

How Easements Are Created in Kentucky

Easements can be divided into two categories: 1) easements that benefit the adjoining land, regardless of who owns that land which are known as easements appurtenant and 2) easements that benefit a specific person or entity, known as easements in gross.

Implied Easements – To prove the existence of an implied easement, a claimant must show:

- That there was a severance of title from common ownership;
- That before the severance occurred, the use which gave rise to the easement had continued for so long and was so obvious and manifest that it must have been intended to be permanent; and
- That the use of the claimed easement was highly beneficial and convenient to the land conveyed.

Easements By Necessity

To establish an easement by necessity, a claimant must prove:

- Unity of ownership between the dominant estate and the servient estate;
- Severance of the unity of title by a conveyance of either the dominant or servient estate; and
- Strict necessity of the use of the servient estate to provide access to the dominant estate.

Easements by necessity most commonly arise in relation to lands that are landlocked or otherwise inaccessible. In such cases, strict necessity has been defined as absolute necessity. If there is any other means of access, regardless of how inconvenient it may be, the claimant will not satisfy the strict necessity element required to establish an easement by necessity.

Prescriptive Easements – An easement by prescription may be established by a showing of unobstructed, open, peaceable, and continuous use under claim of right for a period of at least fifteen years.

Express Easements – Under Kentucky law, an express easement is created by written agreement of the parties. Whether by deed or contract, an express easement is created only if language of "grant" or "reserve" is included in the document.

Easement and Boundary Disputes

One of the most common easement issues involves encroachments. When a property owner erects improvements that encroach on the adjoining land, he may be required to remove them or to pay the adjoining landowner for an easement.

Another common easement issue involves misuse. If an easement holder uses the easement for an unauthorized purpose or attempts to change the location or enlarge the dimensions of the easement, the landowner may have a claim for misuse against the easement holder. Likewise, an easement holder may have a claim against a landowner if the landowner interferes with the easement holder's rightful use of the easement or if he attempts to relocate the easement or to diminish its size.

Help from a Real Estate Attorney in Kentucky

A real estate attorney may assist in drafting and recording the documents necessary to create an easement. Moreover, a real estate attorney may represent a party who is involved in an easement dispute. A real estate attorney typically advises a litigant on the current state of easement law and recommends an appropriate course of action in light of the law.

Even if you don't think so, you might have an easement on your property. Easements usually lie there quietly, not affecting you for years or decades. Then, you decide to bump out your house, put on an addition, dig a pool, or erect a fence and you find out that you have a legal easement on your property.

Property easements come in many shapes and forms. There are utility easements that allow sewer and gas lines.

There are driveway easements that allow access to your property in the form of a short road or driveway. There are sidewalk easements that allow the public to walk in front of your property, as long as they stay on the sidewalk.

These easements (and others) are part of this strange world where the public, government agencies, and utility companies have access to your property, yet you still own the property.

How to Find out If You Have an Easement

Easements are legal designations that allow individuals or entities to use portions of your property (to build on or for physical access), even though you still own the land and technically have a right to build on it. The person or entity who is allowed to do this is called the *dominant estate*; you are the *servient estate*.

Most homeowners should already know that their property contains an easement: it's right there in the title documents when you buy the house.

But as the years go by, we tend to forget such things. If the homeowner dies and the house goes to a child, it's easy to miss such details altogether when the transaction is made. Any good real estate agent or title clerk will point out that the property you intend to purchase has an easement running through it.

If you can't find your title documents, check your county website's tax assessor section. Likely you can find documents relating to your property, including easements.

Easements That May Affect You

The world abounds with easements, but only certain types may affect a homeowner who wants to build or remodel. Some types listed in order of how common they tend to be:

1. *Utility Easements (Below Ground)*: Storm drains, sanitary sewer mains, or natural gas lines frequently run through and under private property.
2. *Utility Easements (Above Ground)*: Electrical power lines or telephone lines also run over private property.
3. *Sidewalk Easements*: These are the most common type of easement, the type which countless homeowners have on their property. Even if a sidewalk isn't physically in place, you may still have a sidewalk easement in place on paper.

4. *Driveway Easements*: A typical scenario: you have a deep lot which you subdivide into two (front and back). You build your own house on the front lot and sell the back lot. The buyer builds a house on the back lot. To gain access to that back lot, the buyer should have a driveway easement.
 5. *Deadend or Beach Easements*: These easements usually run along the side border of a property and allow the public access to an area beyond your property, such as a beach, park, or simply as a shortcut.
1. *Conservation Easements*: This may be a greenbelt or park running alongside your property.
 2. *View Easements*: This is less common, but becoming more common as communities become aware of the monetary value of sight lines. A view easement might give your neighbor the right to enjoy a view of the coastline without you blocking the view by building your house up, planting trees, or adding other obstructions. Your house's warranty deed should have an attachment that spells out the conditions of the easement. The documents received back from the title company will have your warranty deed and attachments.

So What Can You Build?

The short and accurate and prudent answer: nothing. If you value peace of mind over everything else, staying off of an easement is the way to go, and this includes any kind of building, from a house addition all the way down to a child's playhouse.

But there is some flexibility when it comes to the rules.

- **Fences**: Fences regularly get built along or across easements. Homeowners who do this must expect the chance that their fence might be pulled down by a dominant estate (utility company, for example). A few utility companies state that, as a courtesy, they will do their best to reconstruct the fence.
- **Hot Tubs, Pools**: Above-ground hot tubs and pools are also subject to removal. In-ground pools are more problematic, not only because they cannot easily be removed but because they may interfere with in-ground easements. It would not be wise to put an above-ground hot tub or pool on an easement.
- **Shrubs and Grass**: Bushes, lawn, and other shallow-rooted shrubbery may be planted on easements. Trees and other major vegetation should not be planted on easements. One common scenario: you have an above-ground garden planted on an easement, covering the manhole to the sewer main. Workers regularly access this manhole, working around the plantings. Shrubs are removed only at key areas.

Where can I find documents concerning my Easement?

Contact:

**Bullitt County Clerk's Office
Kevin Mooney, County Clerk
149 Walnut Street
Shepherdsville, KY 40165
Phone: 502-543-2513**

Open:

Monday, Tuesday, Wednesday, Friday:

8:00 a.m. – 4:00 p.m.

Thursday:

8:00 a.m. – 6:00 p.m.

