

Homeowner's guide to

Easements

PROTECT YOUR
BOUNDARIES

Understanding Land
series: 01



Homeowner's Guide to Easements

WHAT IS AN EASEMENT?

An easement provides the legal right to use a portion of another's land for specific purposes.

WHY DO EASEMENTS EXIST?

Boundary law states that you cannot build on, obstruct, use or traverse a property that is not yours. Doing so can be considered trespassing.

There are many situations, however, where access to another's property is legitimately and legally required. Some examples include:

- ✓ Your local utility being able to access their equipment on your property (hydro boxes, power lines, underground pipes, overhead wires etc.) legally and without interference.
- ✓ You and your neighbour need to share a narrow driveway between your houses to get to your garages at the rear.
- ✓ A laneway exists across the back of several properties that allows you and your neighbours to access the rear of your properties by cutting across the back of each others' lands.
- ✓ You have access to a portion of your neighbour's land for a specific purpose, like maintaining your eaves, or accessing a portion of your property that you couldn't otherwise do without trespassing.
- ✓ Special access over neighbouring properties for construction vehicles on a new construction site.
- ✓ Air corridors around airports and heliports that prevent buildings from interfering with flight paths.
- ✓ A municipality needing to protect and access their underground drainage assets that may be on your land.

Easements are the tool used to create exceptions to boundary law. They turn what would have been a trespass situation into a legal right.



ASK THE BOUNDARY BOSS

Q: What is an easement?

A: An easement provides the legal right to use a portion of another's land for specific purposes.



HOW DO I KNOW IF THERE'S AN EASEMENT ON MY PROPERTY?

Easements are documented on a property's Parcel Register. They also are shown on survey plans, providing the easements were in existence at the time the survey was prepared.

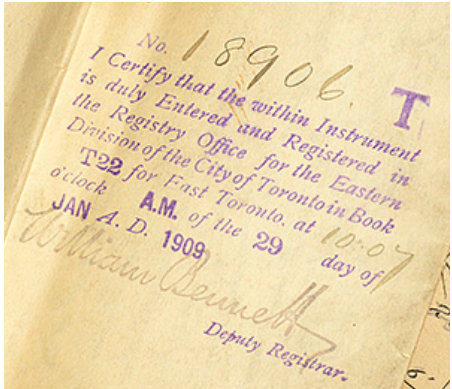
The simplest way to find out if there's an easement on a property is to examine the property's legal description. If the legal description contains the letters "ST" (or "S/T" or "Subject To") and/or the letters "TW" (or "T/W" or "Together With"), then this property is subject to easement rights.

WHAT IS THE DIFFERENCE BETWEEN AN S/T AND A T/W EASEMENT?

ST stands for "Subject To". It means that the property is the "Servient Tenement" – the party who is giving up the right. A property with ST in the legal description indicates that it has given up specific access rights to another party.

TW stands for "Together With", and represents the flip side of the easement right. A property with TW in its legal description signifies that this property has easement rights over a portion of another property.

To illustrate the point, if your property has a small easement over your neighbour's property, your property's legal description will contain T/W because yours is the Dominant Tenement, which has gained the right. Your neighbour's legal description will contain S/T because their property is the Servient Tenement giving up the right.





ARE ALL EASEMENT ALWAYS SHOWN IN THE LEGAL DESCRIPTION AND ON THE PARCEL REGISTER?

Mostly, but occasionally not. If they are registered on title correctly then they will be. However, on occasion easements have not been fully and correctly registered and so do not appear on the documentation. These are known as unregistered easements and can still be valid.

A good example is that you have a telephone pole in your back yard but no easement on title. The fact that a utility company has a pole there indicates that there should be an easement. Your best course of action is to assume there is, although it may be unregistered.

If you suspect that your property is subject to an unregistered easement we recommend contacting a lawyer who specializes in land (and specifically easement) issues.

WHO "OWNS" THE EASEMENT?

Easements aren't "owned" but rather are legal rights given and taken from the parties involved. The important thing is that most easements relating to residential properties are granted to the properties, and not the owners. In some cases, such as utility easements, the rights accrue to a corporation such as your local hydro company, Bell, Rogers, the subdivision builder, Condominium Corporation or even the municipality.



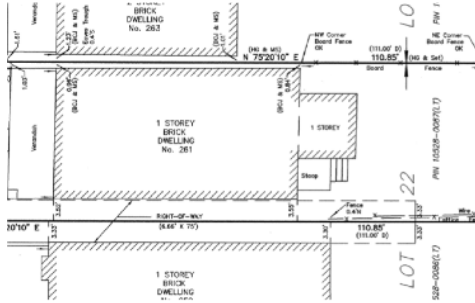


SELLING A PROPERTY THAT IS SUBJECT TO AN EASEMENT.

If you are selling a property it is almost always in your best interest to disclose all material facts about the property (even the bad stuff) so as to prevent your buyer from suing you for misrepresentation or non-disclosure. This includes easements.

Easements affect property value and use of land. If your property is subject to an easement you must ensure that your agent discloses the full details of the easement in the listing.

The best way to do this is to provide the easement documentation in this report to potential buyers. You may also want to provide a survey of the property, which shows the location and dimensions of the easement.



BUYING A PROPERTY THAT IS SUBJECT TO AN EASEMENT.

If you are buying a property that is subject to an easement you want to make sure that you know exactly the location and dimensions of the easement. The most common easement issue that new homeowners face is that the long-standing neighbour with whom you now share the easement rights does not know or respect the rights afforded by the easement. They might have got used to parking on the easement or storing bikes and hockey nets.

It's important that you know the extent and location of the easement, and exactly what rights you will be gaining or giving up. It is equally important, however, to understand how your future neighbour feels about the easement and his rights and obligations relating to it.



IS A SHARED DRIVEWAY AN EASEMENT?

Yes, a shared driveway is a type of easement. You'll know that your property has a shared driveway with a neighbour if the legal description contains "ST and TW" together.

WHAT CAN I DO ON A EASEMENT?

The golden rule of easements is that you cannot prevent the dominant tenement (the party with the right) from being able to exercise their right of access and use of the easement. In most residential property cases this means that the easement cannot be physically blocked or obstructed.

If you have a shared driveway, neither party can block or obstruct the easement at any time.

If you have a utility easement in your back yard, be aware that any landscaping or construction you do on the easement can be removed (and not replaced) by the utility company.

CAN I BUILD A FENCE ON AN EASEMENT?

No you cannot. You can build a fence along the edge of the easement (on your side of the property line), but you cannot build anything that interferes with the use of the

easement by the dominant tenement. Even if you and your neighbour agree to build a fence on the easement, be aware that a future owner has the right to remove it.



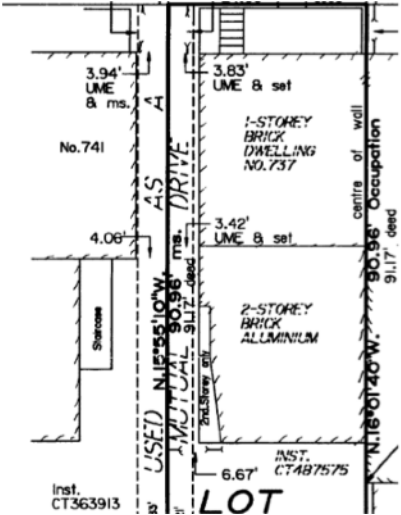
CAN I REMOVE OR DELETE AN EASEMENT?

Yes, but only if both parties agree and the office of the Land Registrar does not believe that its removal will degrade the use and enjoyment of the land for future property owners. The removal of an easement, whether with both parties content or not, is a legal process. If you wish to pursue this option, contact a lawyer who specializes in land and boundary issues.

Other situations where easements are removed or deleted are:

- The easement has an expiry date, and that expiry date has been reached;
- The servient land that includes the easement is expropriated;
- The same party owns both the servient and dominant lands

Each of these situations has its own process that your land lawyer can help you understand.



CAN I ADD AN EASEMENT?

Yes you can. But there are limitations and specific processes depending on the circumstances.

If both parties in the proposed easement agree to the easement, you will need to contact a lawyer who specializes in land law to take you through the process.

Easements are typically added by deed, contract and sometimes court order. In the cases of condominiums, they are added through the condominium declarations.



HOW DO I FIND OUT WHAT THE EASEMENT IS FOR?

In a property's legal description, the ST or the TW are followed by an alphanumeric code (e.g. YR45398). This is called an instrument number. An instrument is a legal document that describes the details of something on title. The instrument number is a unique identifier for that document.

In the case of easements, the instruments describe the extent and purpose of the easement, and the rights and obligations that the owners of the properties party to the easement must abide by.

Instruments are included in our Boundary Wise, Easement, and Buyers & Sellers Report.

HOW DO SURVEYORS HELP?

Surveyors are the professionals who survey the land and create the drawings (survey plans) of a property showing legal boundaries, buildings and structures and the location and dimensions of easements.

If you are looking to add, delete, transfer or abandon an easement, contact a lawyer who specializes in these issues. They will, in turn, contact us or another surveyor to provide those services as required.





NEED MORE INFO?

Province of Ontario (2005). [Easements and release of easements](https://www.ontario.ca). Retrieved from: <https://www.ontario.ca>

BoundaryBoss (2015). [Easements can impact the real estate transaction](https://boundaryboss.com). Retrieved from: <https://boundaryboss.com>