

# Easements: What You Need to Know

## What Is an Easement?

An easement, a type of estate or interest in land, is a right to enter or use someone's land for a specific purpose and for a specific time. Easements are commonly used to cross someone's land, i.e., sharing a driveway. Easements are also commonly used to install utilities such as power lines and fiber optic cables. While these are common examples of easements, easements can be created to do just about anything with a piece of land.

As property law professors often say, "Land ownership comes with a bundle of rights; giving someone an easement gives them one of the rights from the bundle."

## Terms to Know

- **Servient Estate:** The piece of land that is burdened by the easement.
- **Dominant Estate:** The piece of land that is benefitted by the easement.
- **Fee Simple:** Full legal ownership of land; the most powerful estate in land.
- **License:** A revocable personal privilege to enter or use a piece of land but not an interest that runs with the land. A license may not be inherited or assigned.

## Types of Easements

- **Appurtenant:** These easements "inhere in the land" or run with the land, meaning they give rights that are inseparable from the burdened and benefitted properties.<sup>1</sup> These burdens are binding on subsequent landowners so the easement remains in effect even when the land is sold, assuming recording requirements are met.<sup>2</sup>  
**Common Example:** Right-of-way easement giving ingress and egress to a landlocked parcel.
- **In Gross:** These easements are personal rights that cannot be granted to another person.<sup>3</sup> The benefit of an in-gross easement is held by an individual person or company, not a parcel of land.  
**Common Example:** Utility easement

## Rights of Way

A right of way is a type of easement, and it may be public or private. Rights of way create "[t]he right to pass through property owned by another."<sup>4</sup>

- Public rights of way grant a right of passage to the general public for the use of highways, roads or other thoroughfares.
- Private rights of way give rights to a specific individual or entity. Private rights of way may be used for ingress and egress or for installation of utilities and services across another's property.

**In Indiana, public utilities may be laid in public highway rights of way or railroad rights of way and do not create an additional burden on the servient estate in the eyes of the court.<sup>5</sup> If there is no additional burden then the servient landowner is not owed additional compensation. For this reason, it is important to avoid referring to an entire corridor of land as a right of way. A legal right of way is an easement.**

<sup>1</sup> *Consolidation Coal Co. v. Mutchman*, 565 N.E.2d 1074, 1083 (Ind.Ct.App.1990).

<sup>2</sup> *Larry Mayes Sales, Inc. v. HSI, LLC.*, 744 N.E.2d 970, 973 (Ind. Ct. App. 2001).

<sup>3</sup> *Id.*

<sup>4</sup> BLACK'S LAW DICTIONARY (8th ed. 2004).

<sup>5</sup> *Fox v. Ohio Valley Gas Corp.*, 235 N.E.2d 168, 172 (Ind. 1968); *Ritz v. Indiana and Ohio R.R. Inc.*, 632 N.E.2d 769, 775-76 (Ind. Ct. App. 1994).

## Easement Creation

- **Express:** The easement is created through a written document and must be recorded.
- **Prescription:** The easement is created through 20 years of continuous use. The fee simple owner must have knowledge of the use and must not have consented to it.<sup>6</sup>
- **Implied:** The easement is created when the land in question was previously under one owner, but has now been severed. Implied easements may arise in two ways:
  - By Prior Use:** Prior to severance, part of the land was used for the benefit of another part, and the continuation of this use is reasonably necessary for the enjoyment of the parcel; or
  - By Necessity:** Following severance, part of the land is landlocked and it is reasonably necessary to traverse the other parcel in order to access a public road or otherwise gain entry to the land.

## Eminent Domain

The government, utility companies, and railroads may create an easement using eminent domain. While many landowners may dislike eminent domain, it does establish a process by which the landowner receives notice and just compensation for the condemnation.<sup>7</sup>

## Scope of Easements: Can They Put That There?

Identifying the type of easement on your land is critical to determining what additional burdens can be imposed on your property.

- Private easements are generally limited to the purpose or use for which they are created.<sup>8</sup> For example, a utility easement created for the installation and maintenance of electric poles and wires does not allow for the installation of buried electric cable because buried cable is beyond the scope of poles and wires. For this reason, it is important to limit the scope of an easement as much as possible.
- Public right-of-way easements are generally created to allow public passage on highways and roads; however, the Indiana Supreme Court has ruled that public utilities may be installed upon and under these rights of way, and that no additional compensation is due to the servient estate holder for such use.<sup>9</sup>
- Railroad rights-of-way are generally limited to the scope of maintaining and operating a railroad; however, the Indiana Supreme Court ruled that railroad companies possessing an easement may grant a license to utility companies for installation of amenities along the railroad right-of-way.<sup>10</sup> The Indiana Court of Appeals also ruled that this license is not an additional burden and that servient estate owners are not owed additional compensation for the installation of the utility.<sup>11</sup>
- If a public highway easement is implied by prior use, an easement exists for the traveled portion of the road, and a license exists with respect to the property adjacent to the roadway to allow for the maintenance of the road.<sup>12</sup>

## A Publication of



This publication is to serve as a general information guide and is not a substitute for individual legal advice. Please consult your attorney concerning your individual case.

<sup>6</sup> See IC 32-23-1-1.

<sup>7</sup> See IC 32-24-4-2; IC 8-4-1-15.

<sup>8</sup> *North Snow Bay, Inc. v. Hamilton*, 657 N.E.2d 420, 423 (Ind. Ct. App. 1995).

<sup>9</sup> *Fox*, 235 N.E.2d at 172.

<sup>10</sup> *Calumet National Bank v. AT&T*, 682 N.E.2d 785, 791 (Ind. 1997).

<sup>11</sup> *Ritz*, 632 N.E.2d at 775-76.

<sup>12</sup> *Contel of Indiana, Inc. v. Coulson*, 659 N.E.2d 224, 228 (Ind. Ct. App. 1995).