

EASEMENTS

Cori Dolan and Mark Apel

Easements are the right to use the land of another for a special purpose. Unlike a lease, an easement does not give the holder a right of “possession” of the property, only a right of use. There are several reasons easements are granted. Most properties, for example, contain a utility easement, or a strip of land used by utility companies to construct and maintain overhead or underground electric, telephone and cable television lines. 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. Another reason an easement might be put in place is to grant access to an adjacent area. For instance, a property owner whose land abuts a public road can grant access through their property to a neighbor whose land does not physically connect to the public road. An easement of this nature would become part of the deed for both properties. Once an easement is put in place, it stays even if the property gets transferred to a different owner.

The person who grants an easement on their property may be subject to restrictions on that piece of land. For instance, with utility or access easements, the landowner usually can not build structures within an easement area or use fencing that would hinder access.

Although easements get transferred to new owners, there are ways that easements can be removed. It usually will take some overt legal action or procedure to remove an easement. It also depends on whether an easement is a “public” easement, e.g. a right granted to a governmental agency such as the state or a county for right of way, or a “private” easement – an agreement between private entities. Public easements may only be removed or “abandoned” by a governmental body like a county’s Board of Supervisors. Generally, easements are abandoned due to a lack of use or necessity. For example, many easements for access are negotiated with property owners in anticipation of needing access sometime to adjacent lands in the future. However, if adjacent properties are never developed, or alternative access is provided, then the original easements become obsolete.

Conservation Easements

Landowners may choose to grant an easement to conserve a certain piece of their property. For instance, you may want to protect an area that contains endangered wildlife habitat or riparian corridors from development, regardless of who owns the property in the future. A conservation easement does just this. It is a voluntary agreement that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. Conservation easements may be designed to cover all or only a portion of a property. The activities allowed by a conservation easement depend on the landowner’s goals and the characteristics of the property. For example, some easements would allow no further development on the land while others may allow some development. In many instances, traditional uses such as grazing or farming are allowed to continue.

Conservation easements are usually donated to a land conservancy or a government agency but can be sold to these entities as well.

Granting conservation easements offers some benefits to the landowner in addition to land protection. The donation of a conservation easement may provide significant financial advantage to the donor through a federal income tax deduction or estate and property tax relief. To qualify for a tax deduction the easement must be donated to the government or a qualifying conservation or historic preservation organization. IRS regulations require that the property have “significant” conservation values, such as forests, wetlands, grasslands, endangered species habitat, and/or scenic areas. Land trusts or government agencies may have their own criteria for accepting easements as well.

Before you purchase property, find out where all easements are located and what restrictions are associated with them. Keep in mind that because an easement is not currently being used does not mean it will never be used. As long as an easement is a part of your deed there is always

a possibility that the individual who benefits from it will decide to enforce it. Since easements are legal documents, you may begin your search for information about any easement at your county's recorder office. Make sure you have sufficient property information such as a tax parcel identification number. Title companies are very competent in tracking down "encumbrances" to a property, such as easements, through a county's recorder office. This is routinely done when property is transferring ownership. A county's tax assessor office may also be helpful in identifying where access and utility easements are located on a piece of property since they have the responsibility for mapping tax parcel boundaries, including those parts of a property with a surveyed and recorded easement.



THE UNIVERSITY OF ARIZONA
COLLEGE OF AGRICULTURE AND LIFE SCIENCES
TUCSON, ARIZONA 85721

MARK APEL
Associate Area Agent, Cooperative Extension

CORIN DOLAN
Former Program Coordinator

CONTACT:
MARK APEL
mapel@cals.arizona.edu

This information has been reviewed by University faculty.
cals.arizona.edu/pubs/natresources/az1507e.pdf

Other titles from Arizona Cooperative Extension can be found at:
cals.arizona.edu/pubs

Any products, services or organizations that are mentioned, shown or indirectly implied in this publication do not imply endorsement by The University of Arizona.

Issued in furtherance of Cooperative Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, James A. Christenson, Director, Cooperative Extension, College of Agriculture & Life Sciences, The University of Arizona.

The University of Arizona is an equal opportunity, affirmative action institution. The University does not discriminate on the basis of race, color, religion, sex, national origin, age, disability, veteran status, or sexual orientation in its programs and activities.