

Understanding Easements and Rights-of-Way



This brochure is intended to provide a basic introduction to easements and rights-of-way. For more detailed information or for advice about easements or rights-of-way contact an Alberta Land Surveyor, Alberta Land Titles or your legal advisors.

The Alberta Land Surveyors' Association has produced this brochure as a public service.



**Alberta Land Surveyors'
Association**

What is an easement or right-of-way?

An easement* or right-of-way is an agreement that confers on an individual, company or municipality the right to use a landowner's property in some way. While these agreements grant rights, they also have the effect of partially restricting an owner's use of the affected portions of land.

For example, if you own property and a utility company has a main gas line passing under your land, it is likely that they will have a registered easement that will guarantee them access to the line and restrict uses or activities that would hamper such access or cause safety concerns.

Easements and rights-of-way are usually registered on the certificate of title to the property. They remain with the land and are automatically transferred from one owner to another as the land is sold. Easements remain on the title until the holder of the easement discharges their rights from the certificate of title.

An easement or right-of-way usually describes a particular portion of property, and although not visible on the ground, provides an area of access to the holder of the easement or right-of-way.

Easements and rights-of-way are very common. Most urban and many rural properties are subject to easement or right-of-way agreements.

What are some examples?

Often an easement is referred to as a 'right-of-way.' This term is particularly used for energy and municipal-related easements.

Easements

- access roads
- pathways/walkways
- utilities
- right to park
- right of light
- right to commit a nuisance (noise, dust, etc.)

Rights-of-Way

- utility corridors
- power lines
- sewer/water lines
- gas/oil transmission lines

**There are technical differences between the terms easement and right-of-way but they have the same effect upon the landowner.*

Who owns an easement or right-of-way?

The holder (beneficiary or grantee) of an easement or right-of-way holds certain rights regarding usage of the property described in the agreement. The holder's rights of use are described and restricted by the agreement. **The landowner continues to own the land** and has only given up defined rights on the portion of land used for the right-of-way or easement.

The agreement defines all the rights and obligations of the holder of the easement or right-of-way and the restrictions that are placed upon the property subject to the agreement.

What is a blanket easement?

A blanket easement may cover an entire parcel of land — not only the specific location of a utility structure. Blanket easements were often used to provide for protection of well-site flow lines and for water and gas co-ops. A property owner should check with the holder of the easement to see if it is still required or whether it can be reduced in size.

Does a landowner get paid for an easement or right-of-way?

The landowner granting the easement will receive a payment (\$1.00 minimum) to make the agreement legal. Any other compensation is subject to negotiation between the landowner and the company or person requesting an easement or right-of-way.

Can a landowner refuse to provide an easement or right-of-way?

Yes. A landowner must consent in writing before the registration of a new easement or right-of-way. If a landowner refuses to grant consent, an easement or right-of-way may still be obtained and registered if it is based upon a decision of the Surface Rights Board, expropriation, or a judge's order if it is determined that registration would be in the greater public good.

Can an easement or right-of-way be removed from the title?

Yes. An easement or right-of-way may be removed with the consent of the holder of the agreement or by judge's order. An argument for removal must be based upon proof that the easement or right-of-way is no longer needed. Even though an easement is removed from the certificate of title, its boundaries remain on plans to show locations of abandoned buried facilities.

How can the location of an easement or right-of-way be determined?

There are four ways to determine the location of an easement or right-of-way. First, a survey plan may be registered at Land Titles. Second, the easement may be described by a metes and bounds description, which describes the location of the easement in words. In addition, the metes and bounds description may be accompanied by a sketch showing the location of the easement.

Third, a landowner can consult the holder of the easement or right-of-way or, fourth, have the boundaries identified by an Alberta Land Surveyor.

Will a building permit include information about easements?

No! It is the responsibility of the landowner to know of any easements or rights-of-way that may restrict uses of land.

The holder of the easement or right-of-way may be able to veto future development and uses of buildings may be restricted even if they are not located on the specific land identified as the easement or right-of-way.

Before landowners build or apply for a development permit, they should check the certificate of title to the land for easements or rights-of-way and any accompanying restrictions. It is the landowner's responsibility to know.

A landowner should contact Alberta One-Call at 1-800-242-3447 or the holder of the easement or right-of-way prior to any construction activity in order to determine the location of underground facilities.

Will an easement or right-of-way affect the value of property?

Each situation is different. The value of property may be affected by restrictions on the land resulting from the easement or right-of-way. Property owners and purchasers should consider the effects of easements and rights-of-way.

Restrictions are placed upon use of the property subject to the right-of-way or easement for a variety of reasons. Most restrictions are based upon either access or safety. Some restrictions may be negotiable, while others may be specified by government regulation and are, therefore, non-negotiable. Restrictions may affect a significantly larger portion of the property than the area defined in the easement or right-of-way agreement.

What kinds of restrictions usually accompany an easement or right-of-way?

Typically, location of buildings on the easement or right-of-way will be prohibited and even the location of some structures near the easement or right-of-way may be restricted. Each agreement will specify the restrictions for the particular property.

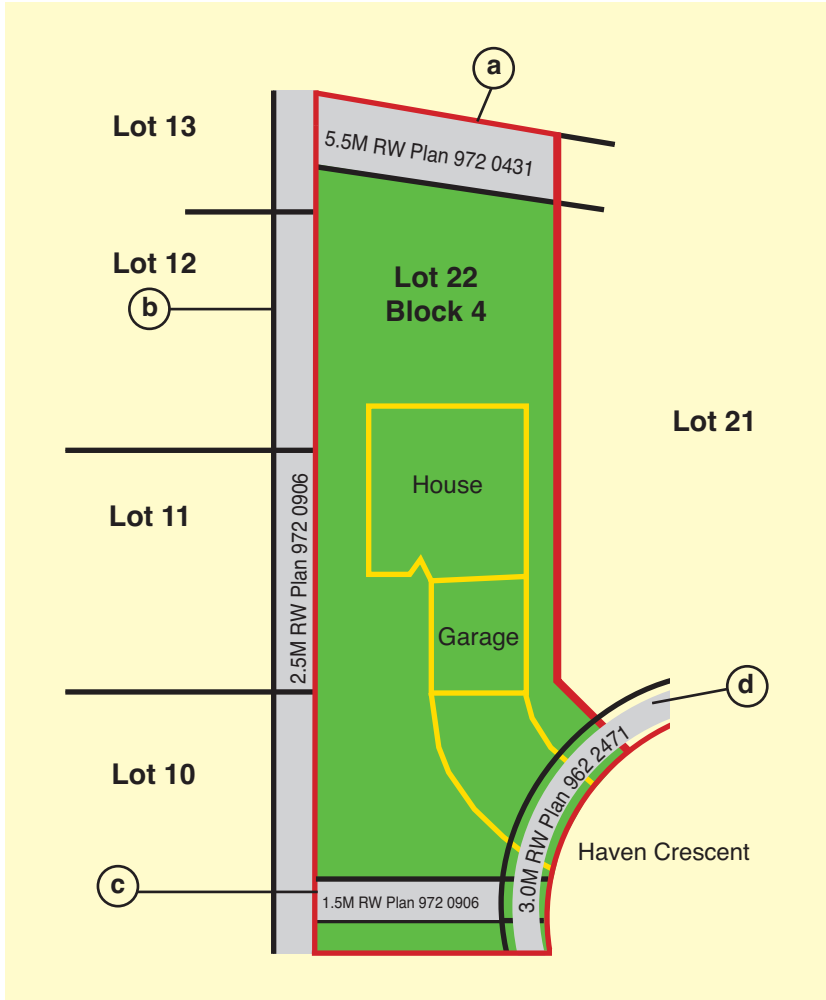
Uses that do not pose any safety concern or that will not restrict access are often permitted. Landowners should consult any easement or right-of-way agreement prior to undertaking any major construction or alteration to their property.

What is an encroachment on an easement or right-of-way?

An encroachment is a physical intrusion (location) of a structure, part of a structure or land use into the area of the easement or right-of-way contrary to the agreement. Depending upon the type of encroachment, the holder of the easement or right-of-way may require that the structure be removed or land use be terminated at the landowner's expense.

It may be possible to encroach on an easement. This requires the prior written approval of the holder of the easement or right-of-way. The approval is usually by way of an encroachment or amending agreement.

Example Urban Lot Easement/Right-of-Way; Lot 22 Block 4

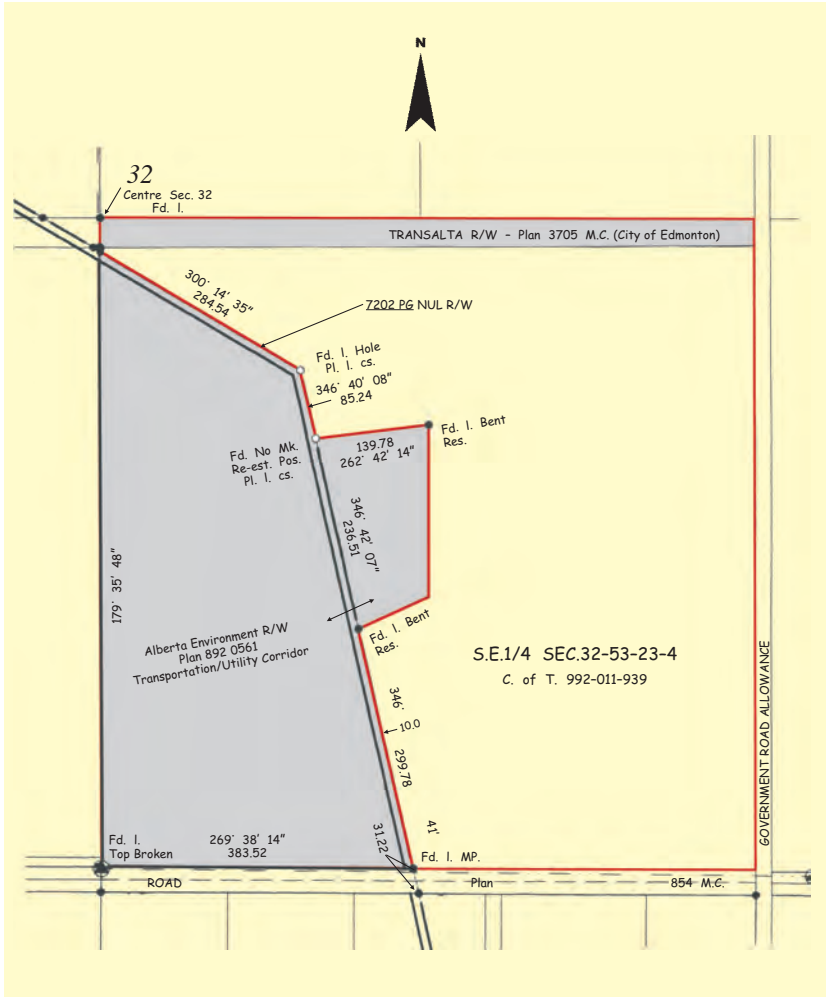


- (a) High Pressure Gas Line
- (b) Drainage Swale
- (c) Drainage Swale
- (d) Utilities (Gas, etc.)

Note: The red line marks the property boundary. RW Plan means Right-of-Way Plan.

Example: Rural Land Easement/Right-of-Way; Quarter Section

SE 1/4 Sec 32-53-23-4



This quarter section has five instruments registered on the title, two of which are utility rights-of-way. Any proposed development of the property could face severe restrictions. See the "Certificate of Title" for this quarter section on page 8.

Note: Shaded areas are rights-of-way.

Example: Rural Land Certificate of Title Quarter Section SE 1/4 Sec 32-53-23-4

Short legal 4;23;53;32;SE
Title number 992 011 939

Legal description

Meridian 4 Range 23 Township 53
Section 32

All that portion of the south east quarter
Lying easterly and northerly of transportation/utility corridor right-of-way
Plan 8920561. Containing 41.10 Hectares (101.56 Acres) more or less
Excepting thereout:

	Hectares	(Acres)More or Less
(A) Plan 854MC – Road	0.64	1.58

Excepting thereout all mines and minerals.

Estate: Fee simple
Municipality: City of Edmonton
Reference number: 912 103 193A

Registration	Date (D/M/Y)	Registered Owner(s) Document type	Value	Consideration
992 011 939	15/01/1999	Amendment – Legal Description		

Owners
Her Majesty the Queen in Right of Alberta
As Represented by the Minister of Public Works, Supply and Services
Of 2nd Floor, College Plaza
8215-112 Street Edmonton
Alberta T6G 5A9

Encumbrances, Liens & Interests*

Registration Number	Date (D/M/Y)	Particulars
6881HW	01/04/1965	Utility right of way Grantee – The City of Edmonton As to portion or plan: 3705MC "Data Updated By: Transfer of Utility Right-of-Way No. 872221308"
7202PG	06/02/1968	Utility right of way Grantee – Northwestern Utilities Ltd. "Part"
7118RL	08/12/1969	Mortgage of Utility Right of Way Mortgagee – Montreal Trust Company Affects Instrument: 7202PG
922 028 207	01/02/1992	Zoning Regulations By – Her Majesty the Queen in Right of Canada as Represented by Minister of National Defence Namao Airport
972 234 959	08/08/1997	Caveat

**It is necessary to review each of these registered documents to determine the actual restrictions on the property.
These kinds of encumbrances, liens and interests may not be illustrated on the plan for the property.*

Can a landowner cross an easement or right-of-way?

It is the responsibility of a landowner to contact the holder of an easement or right-of-way prior to any proposed construction or crossing. The holder will normally grant a crossing agreement or the appropriate consent. Typical examples of crossings are: utilities (both overhead and underground); fences, roads, driveways, ditches, grading or changes to the soil cover over an easement or right-of-way.

Are there penalties for locating buildings or improvements on land subject to an easement or right-of-way?

The landowner may be faced with all costs of removal and any associated damages resulting from unauthorized location of improvements on land that is subject to an easement or right-of-way.

Who maintains the property subject to an easement or right-of-way?

Maintenance of the property is the responsibility of the landowner. If the holder of the easement or right-of-way causes any damage, they must restore the property to the original condition or pay damages. Structures owned by the holder of the easement or right-of-way are not the responsibility of the landowner. The holder of an easement is not required to pay for damages to a landowner's improvements that are located on the easement area contrary to the agreement. (An example might be a garage or similar building located contrary to the agreement. A landowner would be responsible for cost of damages to such an improvement or the cost of removal resulting from a holder's use of the easement or right-of-way area.)

Who can enter the area covered by an easement or right-of-way and when can they enter?

The agreement covering the easement or right-of-way will specify who, other than the owner of the easement, may enter the easement

or right-of-way area and when they are entitled to do so. A notification policy is usually included in the agreement.

Access by the representatives of the holder cannot be prevented although they should carry proper identification. Access must be provided for excavation, repair or any other activities outlined in the agreement.

Why read the agreement?

Each agreement is different. The agreement covering the right-of-way is the only document that spells out the specific details and the limitations or restrictions placed upon the land.

Where does one look for easement or right-of-way information?

For existing easements or rights-of-way, the first sources of information are the plans and documents registered at the Land Titles Office. Once the easement or right-of-way is identified, the next source of information is usually the holder. The holder is usually well informed about the nature of the easement and the restrictions. You may wish to contact an Alberta Land Surveyor or legal advisor for assistance. They are knowledgeable about right-of-way and easement agreements.

How does an easement or right-of-way affect a real estate transaction?

Many properties are sold every day and the location of an easement or right-of-way has little or no effect on the transaction. In other cases, the location of easements or rights-of-way may have a very significant impact. In all cases, however, it is important that the purchaser know where registered easements are located and what restrictions accompany them.

In a real estate transaction it is important to obtain a Real Property Report (RPR) prior to purchasing property. A RPR will not only show the location of all improvements relative to property boundaries, but it will also show where all easements or rights-of-way are located. In addition, any encroachment into an easement area will be identified.

Once the location of easements is determined, a purchaser can evaluate the effect that they will have on the buyer's ability to enjoy the property, build structures or even plant gardens. Encroachments may have to be remedied and may affect the purchaser's willingness to conclude the sale. Easements, such as environmental easements, may actually add to the value of a property.

At the same time, a purchaser may want to determine whether any builders' liens have been placed against the easement property. Such liens may affect the ability to arrange financing or to complete a property transaction.

What is an Alberta Land Surveyor?

Alberta Land Surveyors are professionals — current standards require a university degree or equivalent followed by articling and a series of professional examinations. Land surveyors are governed by provincial law with a mandate to protect the public's interest in matters of real property boundaries. Additionally, they must be registered with the Alberta Land Surveyors' Association. An extensive practice review program ensures surveyors maintain high professional standards.

An Alberta Land Surveyor is fully responsible for the accuracy of survey information. Land surveyors carry professional liability insurance as added protection for the consumer.

Names and locations of Alberta Land Surveyors are found in the "Yellow Pages" under "Surveyors — Alberta Land." For a province-wide list, call the Alberta Land Surveyors' Association or visit the ALSA web site.

Tel: (780) 429-8805

Toll free: 1-800-665-2572

Fax: (780) 429-3374

Web site: www.alsa.ab.ca

E-mail: info@alsa.ab.ca



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Other Information

The Real Property Report—available from the Alberta Land Surveyors' Association

General Bulletin 99-4 Land Development Information Package—available from the Alberta Energy & Utilities Board

Pipelines in Alberta—available from Alberta Agriculture, Food & Rural Development

Where can I get more information or advice?

To determine boundaries of easements or rights-of-way, contact an Alberta Land Surveyor. An Alberta Land Surveyor can also provide additional information and advice about easements or rights-of-way. An Alberta Land Surveyor identifies any easements or rights-of-way on a property when a Real Property Report is prepared.

For questions about laws relating to easements or rights-of-way, contact independent legal sources. The staff at Land Titles may also be able to provide additional assistance.

A landowner should consult professional advice prior to agreeing to any easements or rights-of-way.

This brochure is provided compliments of: