

Buying real estate? What you need to know about easements and servitudes.

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With the bustle of the holidays behind us, we can now all turn our attention to our next big projects. What will you do in 2015? Maybe this is the year you will buy a home, or perhaps a piece of business property. Once you find that perfect spot, you'll begin your in-depth investigation of the property. Does the roof need to be replaced soon? Where are all the property boundaries? Will your couch fit in the living room? Does the size and shape of the space, not to mention the location, work for your business? Then, in the middle of the deal, you discover that the land you are purchasing might not be 100% yours, or that there are particular restrictions on what you can do with it. You are told that the property is burdened by an "easement" or a "restrictive covenant." What does this mean? Without getting too deep into the legal abyss, here is a listing of easements and other property restrictions worth knowing about:

Utility Easements

A utility easement is an easement given, generally in writing, to a utility company or a city for the purpose of maintaining utilities like electric, gas or telephone lines, above or below ground. Often, the deed will describe utility easements by referring to maps or plats, which are recorded with the town registry of deeds and show the location of the easements. Alternatively, the easement might be described by "metes and bounds" – a confusing mix of lengths, directions, and old markers. Utility easements generally do not have a major impact on your day-to-day use of the land. Depending on the rights associated with the easement, however, you may not want to place your favorite flower bed in the easement area and should avoid blocking the easement with a playhouse, loading dock, or dumpster, as the utility company may have the right to enter, and in some cases dig on, your property for purposes of maintaining the utility.

Rights-of-Way

A right-of-way easement is essentially a third party's right to cross property he or she does not own. You may discover that your neighbor has a right to use a portion of your driveway, or to cross your land to reach a certain area. By contrast, you may discover that your own driveway is on your neighbor's land, and that your land comes with the right to use it. Right-of-way easements arise often in connection with waterfront property—if you're buying a lake house or oceanfront property, watch for access ways to the water.

The right-of-way easement at issue may have been granted by a prior landowner, or it may have arisen by necessity based on the positioning of the buildings. It may also have arisen over time as a result of consistent use. The important thing to know is that most often—although not always—this type of easement carries over from owner to owner. In other words, your purchase of the property is unlikely to extinguish a pre-existing easement, whether that easement is in writing or not, and whether it is visible or invisible.

Easements and Restrictions in Planned Communities or Commercial Condos

Purchasing a property in a planned development? Pay close attention, as easements and restrictions abound. In connection with your investigation of the property, you will likely be given a copy of the Homeowners' Association Bylaws or Commercial Covenants and perhaps other documents describing or showing all of the easements and restrictions applicable to the community. While such documents might not be page-turners, it's important to read them carefully. There might be access easements for other property owners in the development, or restrictions on your ability to make significant landscaping changes. Often, there are provisions requiring that the outside appearance of your property be consistent with that of other properties in the development, so if you've always dreamed of painting your house neon orange, a home in a planned community might not be right for you. On the bright side, as the owner of property in a planned community, you can likely expect to be able to enforce the restrictions on your property against the other properties in the development. For this reason, buyers who prefer to be in a community with consistent architectural design and rules requiring property owners to keep their property in good condition, the easements and restrictions that come alongside ownership of property in a planned community or a commercial condo development are welcome restraints.

While they may not be on the forefront of your mind during the purchasing process, easements and other property restrictions can lead to heated litigation. It is not always clear whether an easement or restriction was created properly, which can draw its enforceability into question. If you find yourself in a situation where you do not fully understand the easements or restrictions applicable to property you are considering purchasing—or the property you have already purchased—consult an attorney. The enforceability of an easement or restriction varies depending on the circumstances, and you will likely need advice tailored to your specific situation.