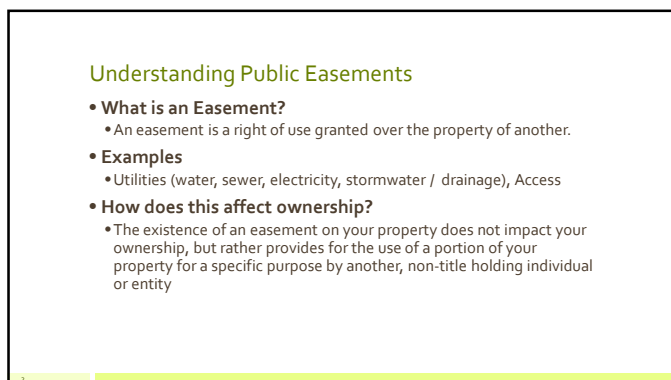
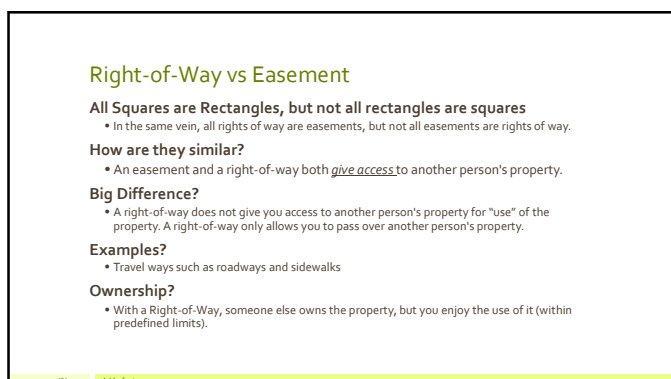


The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice and does not necessarily reflect the opinion or policy position of the Municipal Association of South Carolina. Consult your attorney for advice concerning specific situations.







Right-of-Way Easement

Definition

- A right of way easement can grant you access to your property when it's not accessible without crossing over property held by someone else. Does not transfer ownership.

Very common

- Rural areas – large tracts of land

Types

- Appurtenant easement – when two properties are linked together
- Easement in Gross – not tied to the property, but the worker (checking meters)
- Private easement – two property owners
- Express Easement – Deed or Will
- Prescriptive Easement – fence
- Implied Easement – local custom

Implied Drainage Easements

Why do they Exist?

- Wild, wild West
- Old Farmland – irrigation
- Development before Zoning, BMP's and Stormwater Regulations

Problematic

- Because implied easements by necessity are not recorded, bona fide purchasers may not be aware that the land they are purchasing is burdened by an easement.
- Owners restricting access to property
- Hindering or altogether altering the stormwater system
- Legal Claims
- Entities refusing to maintain without clear, defined access

Drainage Easement Acquisitions

When do they become necessary?

- Resident outcry of drainage and flooding concerns
- Needed maintenance
- Project Construction
- Permits
- Security Concerns
- Homesteaders or over-active gardeners
- Generally, anywhere you have a drainage system that is under your maintenance responsibility, you should have an easement in place

Process

- Start with a Master Plan of all drainage areas in your jurisdiction
 - Could break up by basin
- Engineered Exhibit of the area (Who, What, Where, Why and How)
- Right-of-Way Acquisition Agent



Acquiring Drainage Easements - Best Practices

On-call or Indefinite Delivery Contracts

- Engineers and ROW Acquisition Firms
- Procurement Process

Have a clear cost estimate defined. Consider the following:

- Professional Fees for Design
 - Documents to show property owners the area of easement
 - Make sure cost include a recordable easement plat
 - Usually a definite cost
- Professional Fees for ROW Services (cost per track)
 - Acquisition services usually narrowed to Title Search and Negotiation with Property owner
 - Cost Estimate for offers
 - If needed, appraisals and review fees
 - Staking (based on engineer's exhibits)
 - Best to get approval up front for worst case scenario
 - If have to pay for easements, likely will have to go back for approvals

Sample Drainage Exhibit

Drainage Easements – What should they include?

Stormwater Management Surface Easements

- Perpetual and generally non-exclusive (usually narrowed to just property owner)
- Access to operate, maintain or repair the system.
- Shall have the right to enter upon any portion of any Lot which is part of the System, at a reasonable time and in a reasonable manner, to operate, maintain or repair or replace under proper permits
- Clearly defined maintenance shelf
- No person shall alter the drainage flow of the System, including buffer areas or swales without the prior approval
- If the constructed flow paths are altered or disturbed, fines may be incurred as well as costs to reconstruct the intended flow pattern
- Common Examples of hinderances include filling in for a driveway or constructing an access across like a foot bridge

Sample Easement Document

•THE STATE OF SOUTH CAROLINA DRAINAGE •RIGHT OF WAY EASEMENT
 •COUNTY OF CHARLESTON

•Road/Route Greenhill Overfall Drainage
 •Project ID No. •Improvements
 •Tract 1

*KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____, in consideration of the sum of _____ to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering thereof, by Town of James Island, James Island, SC, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, give, bargain, sell and release, unto the said Town of James Island, James Island, SC, its successors and assigns, an easement or right of way for the construction, improvement, operation and maintenance of a outfall ditch known as Greenhill Overfall in the County aforesaid, as shown on plans prepared by Town of James Island upon and across the land which I (or we) may own, in whole or in part and as depicted and described on the above reference plans together with, all and singular, the rights, members, hereditaments, and appurtenances thereto belonging, or in any way incident or appertaining.

•SPECIAL PROVISIONS:

*The above consideration is for a drainage easement containing 0.254 of an acre (11,085 square feet), more or less, and all improvements thereon, if any, owned by _____ shown as the "Obtain" on Exhibit A, attached hereto and made a part hereof. This being a portion of the property acquired from Fannie T. Quinn by deed dated July 26, 1990 and recorded August 1, 1990 in Deed Book L195, Page 374; all in the records of the ROD Office for Charleston County and shown as Tax Map No. 428-08-00-001.

Sample Easement Document continued

NO. 00000000000000000000

TO HAVE AND TO HOLD, all and singular, the said easement or right of way and the rights hereto granted, unto the said Town of James Island, James Island, SC, its successors and assigns forever for drainage improvements or other public uses as are permitted within and the grantors hereby dedicated their respective interest in said strip of land to public use for such purposes.

It is agreed that buildings, fences, signs or other obstructions will not be erected by me (or us), my (or our) heirs, assigns or administrators within the limits of the right of way herein conveyed and that such buildings and fences are now within the right of way herein conveyed will be removed from the right of way and restored to its good condition as before existing at the expense of the Town of James Island, James Island, SC.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this 26th day of April, A.D. 2023, in the year of our Lord, Two Thousand and 23.