

Questions Answered! →



LANDOWNER EDUCATION

UTILITY EASEMENTS

GENERAL CONSIDERATIONS

As a landowner in Missouri, you may be approached by developers who need to secure an easement in order to provide you with specific services. You may also be approached by companies who want to build structures on your property which do not directly benefit you at all. To build a structure on your property, developers may ask the landowner to sign an easement agreement. Since these are legal documents which create new relationships and forever affect your rights to the property, you should:

- **Take your time. Think about what you are being asked to give up and what it will be like to work with the easement holder in the future.**
- **Retain an attorney to review the documents. Easements are legal documents with permanent ramifications. An attorney may pinpoint some areas of concern that you may not have considered.**
- **Know your property and what it has to offer. Is the developer's proposed use of the land compatible with your use of the property?**
- **Think about the future. Easements negotiated today may still be binding tomorrow, ten years from now or 100 years from now. Are you prepared to create a relationship with the developer for this long?**



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Please be advised that this document is intended for information only. It is strongly recommended that a licensed attorney be consulted for legal advice.**

Glossary / General Definitions

Easement – An easement is an interest in land in the possession of another that entitles the holder of the interest to a limited use or enjoyment of the land. There are different kinds of easements. Easements are either exclusive or nonexclusive. Easement rights are usually permanent, unless specifically negotiated to be limited in some way. The developer is the “easement holder,” and the landowner “grants” an easement by signing a legally binding agreement.

Exclusive easement – An agreement where the easement rights are held solely by the “easement holder.”

Non-exclusive easement – An agreement where others could have the right to use the land at the same time as the “easement holder.”

Transmission line easement – A legal document that allows a power company or utility developer to take some of your rights in order to use your property under certain conditions.

Eminent domain – The legal power to condemn your property. The power of eminent domain can be held by developers who are public utilities as well as some private companies. Often, if a voluntary easement cannot be negotiated with the landowner, the developer can exercise their right of eminent domain to condemn the property they need. Condemnation proceedings are legal proceedings where the need for and fair value of your property will be determined by neutral third parties.

How Does The Easement Process Work?

Although anyone can request that you give an easement right to your property, the request most commonly comes from a utility company providing electrical, water, cable, or sewer service to you and your neighbors. Utility developers may approach landowners to discuss easements several years before the actual service lines are built. For utility companies, there is a lot of planning and preparation associated with building service lines, substations, switching facilities, and other structures needed to support the project.

Step 1 – The developer must acquire property rights wherever the utility line is to be constructed. They attempt this by securing voluntary legal easements. If that fails, the developer may also choose to exercise the power of eminent domain.

Step 2 – Once a legal easement has been established, the developer moves forward with construction. Construction involves clearing of trees and other obstructions from the easement, erecting structures (towers, poles, lines, support wires, anchors, concrete pads), and using heavy equipment like excavators, trucks and/or cranes.

Step 3 – Once the structures are up, the utility developer will have to periodically maintain the easement area and the structures forever. The landowner will also have to refrain from activities which might interfere with the developer’s use of the easement area and new structures comprising the service line.

Minimum Expectations of Any Developer

It is reasonable to expect more of anyone who asks for special rights to use your land. Before approaching you, most developers committed to their project have considered the following:

- How their project will benefit you and/or others,
- How your particular tract of land was chosen to be part of the proposed project,
- How the project will impact the environment, local wildlife, and wildlife habitats,
- How the project will be financed,
- Where existing utility lines are located,
- Classification of any tracts as historically significant or otherwise protected on the National Register of Historic Places,
- Areas of archaeological interest in need of protection,
- Whether the project complies with all federal, state and local laws and regulations,
- Whether all necessary permits have been obtained (or can be) should the project move forward, and
- Whether any hazardous waste will be utilized and /or generated by the project and if so, how same will be dealt with.

You should feel free to ask the developer about these important considerations.

Resources and Information Available to You Upon Request

Utility developers who seek an easement from you have done a lot of leg work. As a landowner, you may have some of the same concerns the developer once held. To make an informed decision regarding whether to voluntarily grant an easement, check to see if the developer will share information with you related to the overall project.

Examples of items you might request include:

- *Route mapping*
- *Transmission capacity studies*
- *Survey and transmission plans*
- *Wildlife studies*
- *Water table studies*
- *Soil sampling results*
- *Publications disseminated at public meetings / hearings*

Landowner Guide to Easement Agreements

In order to build any structures on your property, the utility company will want the landowner to sign a binding legal agreement. Utility companies will need to acquire what is known as a “Transmission Line Easement.” The transmission line easement allows the power company to take some of your rights in order to use your property under certain conditions. The agreement will detail what you are willing to give up, how you will be compensated for your property, the rights and duties of the developer, and the rights and duties of the landowner going forward. If you have decided that granting an easement to the developer is beneficial to you, a written agreement will need to be drafted. Once finalized, this legal document is usually recorded with the local Recorder of Deeds in your county.

Often, the developer has a “standard” form which they have already drafted. You should certainly read the agreement closely to make sure you are comfortable with everything the agreement states. You should have your own attorney look over the agreement. It is common for landowners to ask for the agreement to be modified to suit any concerns they have. Not every agreement will be identical. Every contractual agreement between a landowner and a developer has unique possibilities that can be negotiated with the help of legal counsel to ensure there is no confusion between you and the developer.

Landowner Check-list For Reviewing Easement Proposals

When reviewing or revising an easement agreement, a landowner may want to ask:

1. **Does the agreement set forth a generalized or specific purpose for the easement arrangement?**
 - o Is the developer only allowed to construct, operate or maintain transmission lines; or, can they use the easement for other business endeavors as well?
 - o Am I giving up any land rights above, below or around the perimeter of the easement area? Or, is the agreement just for “surface rights” within the easement footprint?
 - o Will the presence of the easement affect the value of my property?
 - o Will the easement limit my ability to use my property for farming or livestock agricultural production?

- o Does this easement proposal appear to fit within an “overall” development plan? Will the developer share the “overall” plan with me, in writing?

2. Does anyone else have an interest in this property?

- o Are there any mortgagee and/or other lienholders with a legal interest in my property who would be affected by giving an easement in this location?
- o Is any portion of the proposed easement route currently rented or leased for farming to someone else?
- o Should I consult with my local Farm Service Agency (FSA) office to make sure the proposed easement does not trigger a penalty or loss of payments for USDA programs I am participating in?

3. Who am I contracting with?

- o Does the agreement limit the parties to just “me” and the utility company? Or, can the developer “assign” the rights I give them to people I don’t know in the future?
- o If the developer executes a sub-lease and/or sub-easement, will they provide prior written notice of any assignments so that I know what to expect?
- o Do I get to limit the identity, purpose, or number of people the developer can give subsequent easement rights to? And, is this set forth in my easement agreement?

4. Does the agreement set forth a term?

- o Unlike other types of contract agreements, most transmission line easements are perpetual or forever. Are there any provisions for renegotiations once the agreement is signed? Or, is it intended to be a one time, “take it or leave it” agreement?

5. Area leased

- o Will I need to allow surveying and testing to be done for the purpose of determining the feasibility of building a transmission line (structure) on my property?
- o Is the agreement limited to only the land or space necessary to serve the developer’s purpose?
- o Is the legal description of the easement boundary in the agreement?
- o How wide is the right-of-way?
- o Does the agreement address how the developer will access the easement area and any structure placed on my property?
- o Are there any unique characteristics of the

proposed easement area which are entitled to special consideration and/or preservation?

- o Do any areas require special safety consideration or upgrades?

6. What does the agreement say about the amount of property covered?

- o How much of my land will be tied up?
- o Does the agreement state specifically how many square feet is actually at issue?
- o Does the agreement provide sufficient set-backs from any farming operations?
- o Does the agreement provide sufficient set-backs from my home?
- o Does the agreement include a description of any areas where I definitely do not agree to have a utility structure located?
- o Are there any areas of my property which I definitely do not want used as an access point for the easement?
- o Is there any safety concern with the easement location being proposed by the developer?

7. What does the agreement say about my future use of the property?

- o Is there a “catch-all” clause which states that any use not specifically granted to the developer is preserved for my benefit?
- o What activities can I continue on this land? Does the agreement reflect my right to do so?
- o What restrictions will be placed on my land by signing the document proposed by the developer? What about:
 - Farming, crop harvesting, grazing, crop dusting, spraying herbicides?
 - Hunting?
 - Mining for oil, gas or other natural resources?
 - Drilling for water?
 - Addition of new barns?
 - Construction of a new home?

Landowners typically retain existing surface or sub-surface rights (mineral / water) when entering a transmission line agreement, including rights granted by existing mineral leases, special use leases, temporary use permits, and easements.

8. What does the agreement say about the developer’s immediate use of the property?

- o Can they conduct certain activities on the land prior to construction?
- o Will I receive advance notice of the developer’s activities in order to prepare for livestock displacement and/or fence integrity?
- o Will someone be surveying the property?
- o Will someone be taking soil samples, and if so, why?
- o Are there going to be any environmental and/or wildlife studies?

- o Does the developer only have the right to construct and install transmission lines and related structures, or can they build other things as well?
- o How many foundations, concrete pads, footings, guy wires, support fixtures, anchors, or fences will be necessary? Will those interfere with my concurrent use of the area?
- o Will the electrical transformation, electric distribution, transmission towers (poles, wood/steel structures), substations, switching facilities and lines be above ground or underground?
- o Will there be any buildings or maintenance/storage sheds?
- o Which public or private roads will give access to the easement area? Or, will new access routes have to be created? Do allowances for heavy machinery need to be made?
- o Once the structures are in place, will the developer restore the grade at their cost? How will an acceptable grade be achieved? Who determines the new grade? Will I have input into that decision?
- o Will any topsoil be removed from the property or simply be redistributed?
- o Once the grade is restored, will the developer re-seed the area? If so, what seed mix will they use? Can I require the area be re-planted with a certain mixture and/or seed type?

9. What does the agreement say about the developer’s future use of the property?

- o How often will the developer be accessing the easement and will it interfere with my normal routines?
- o Who will be accessing the easement? Developer employees only, or also third party contractors?
- o Who is responsible for mowing or applying weed killers to the easement area?
- o What method of “maintaining” the easement will the developer be using? Will any chemicals be used? Will the developer’s methods be compatible with crops or livestock I keep nearby?
- o Will the developer’s employees have to honor a “No Smoking” ban to protect my fields?
- o Can the developers come at any time of night or day to maintain the line?
- o Will the developer install cattle guards or gates where developer enters or leaves the premises?

10. What does the agreement say about compensation?

- o Payment for these easements can be either in a lump sum or through periodic payments, but most of the payments consist of a lump sum. Are there tax benefits or consequences to the payment method I chose?
Will I make more or less money by choosing a lump sum over an annual payment method?
- o Does the price accurately reflect the fair market value of my land when considering:
 - General location?
 - Type of terrain?
 - The total easement footprint?
 - Any damages to the property caused by installation, maintenance and/or operation of the structures and lines?
 - My inability to farm or earn money off of the easement area in the future?
 - Relocation costs for livestock? Or, safety upgrades needed for pens, gates, locks, or protective fencing?
 - Loss of native grasslands?
- o Does the price account for any increase in insurance cost I may face by having large structures placed on my property owned by the developer?

11. Unforeseen extra costs

- o Will the developer have to pay for any damage done to my property outside the easement area while the structures are being erected, including:
 - Damaged fences?
 - Rock piles?
 - Brush piles?
- o Who must destroy and/or salvage the wood from any trees cut down?
- o Am I being compensated for any unique character my land has to offer?

12. Unforeseen contract clauses

- o Is there anything in the easement proposal that I do not understand?
- o Why is the developer asking about my finances when they are the ones paying me?
- o Why does the developer need to contact my bank?
- o What is a "homestead exemption" and why would the developer be thinking about my bankruptcy rights in the context of an easement?
- o Is there any language which purports to make me responsible for the activities of my tenant or guest?
- o Are there any provisions where the developer is trying to get me to pay for his attorney fees in any situation?

13. Insurance

- o Does the developer have to maintain insurance? If so, what do they insure and how much coverage has been purchased for their employees and contractors?
- o Are all activities insured against?
- o Am I named as an "additional insured" on the developer's policy?
- o How will the developer adjust the insurance over time?
- o Can I have a copy of the Certificate of Insurance secured by the developer?
- o Do I have to ask for the developer's proof of insurance every year, or will they just send it to me?
- o Will I get notice if the developer fails to keep insurance on their structures, or the easement area?
- o Do I need additional insurance for any reason?
- o Have the liability risks on my property increased due to the easement and its accompanying structures?

- o Has the risk to my own buildings increased due to the easement and its accompanying structures?
- o If I need more coverage, who will pay me for that?
- o Does the agreement provide that the developer will be "self-insured"? If so, what are the risks of that type of insurance?

14. What if it doesn't work out?

- o What do I do if the developer fails to make the required payment(s) to me for the easement?
- o Are there provisions in the easement agreement which keep me from forcing the developer to pay me right away?
- o Do I have to give the developer notice that their payment is late?
- o Is the easement automatically void if I don't receive the payments promised to me?
- o If the easement is terminated, does the developer have to remove all towers, substations, switching facilities, equipment, machinery and any other structures on my property or do I?
- o What deadlines or time frames are provided for in the agreement for the developer to remove all materials and structures from the land?
- o Do we have to notify the County Recorder of Deeds if the easement terminates?

Take your time. Retain an attorney. Know your property. Think about the future.

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