



RESIDENTIAL & COMMERCIAL · GUIDE

Easements, rights of way, and encroachments

What these are, how they show up on title or a survey, and when they actually affect what you can do with your land.

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When you buy a property, you might hear that there is an easement on the title, or a right of way across the back, or an encroachment along the side. These words sound alarming, and sometimes they matter a great deal, but often they are routine and barely affect you. The goal here is to demystify them so you know which ones to shrug at and which ones to ask hard questions about.

Easements

An easement is a right for someone else to use part of your land for a specific purpose, even though you own it. The classic examples are utility easements: the hydro, gas, water, or telecommunications provider has a registered right to run lines or pipes across a strip of your property and to access them to maintain them.

Most easements are narrow and predictable. A utility easement along the rear or side of a lot is extremely common and usually does not interfere with normal use of the home. What it can affect is what you build. You generally cannot put a permanent structure (a pool, a garage, an addition) on top of an easement, because the holder has the right to access that area. So an easement matters most when you have plans to build, landscape heavily, or add structures near the affected strip.

Rights of way

A right of way is a particular kind of easement: a right for someone to pass over your land, or for you to pass over someone else's. These come up often with:

- Shared driveways, where two neighbours each have the right to use a driveway that sits partly on each property.
- Landlocked or rear properties, where one owner has a registered right to cross another's land to reach a road.
- Access to shared features, like a shared lane or a path.

A right of way can be a benefit (you have the right to cross someone else's land) or a burden (someone has the right to cross yours), and sometimes both. If you are relying on a right of way for access, you want to confirm it is properly registered and protects you, because access you assumed

was yours but that is not legally secured is a real problem. If a right of way burdens your land, you want to understand what it allows so you are not surprised later.

Encroachments

An encroachment is when a structure crosses a boundary line. Either something of yours extends onto the neighbour's land, or something of theirs extends onto yours. Common ones include a fence built slightly off the line, a garage or addition that overhangs a boundary, eaves or a retaining wall that crosses over, or a driveway that strays onto the neighbour's lot.

Encroachments usually surface in one of two ways: on an up-to-date survey, or through title insurance coverage in the absence of a survey. A minor, long-standing encroachment is often a non-event, and title insurance frequently covers the risk. One common exception is worth knowing about: title insurers will typically not cover a fence encroachment, or will cover it only in a limited way, even though they may respond to a building or structural encroachment. So do not assume a fence that is over the line is a title-insured problem. Whether any given encroachment is covered depends on your specific policy and the exceptions the insurer raises, which your lawyer will review. A significant encroachment can create a genuine dispute about who owns or controls a strip of land, and occasionally about whether a structure has to be moved. The size and nature of the encroachment is what determines whether it is trivial or serious.

How these show up when you buy

- On title. Registered easements and rights of way appear in the parcel register. Your lawyer reviews title and will see them, and will explain any that affect the property.
- On a survey. A current survey shows the physical reality, including encroachments and whether structures sit where they should. Many residential purchases close without a new survey, relying on title insurance instead, which covers many survey-type risks. If you want certainty about boundaries and structures, a current survey is the way to get it.
- Through title insurance. Where there is no recent survey, title insurance typically responds to certain boundary and encroachment risks. This is part of why title insurance has become standard.

When you should pay close attention

Raise these with your lawyer, and consider getting a survey, when:

- You plan to build, add on, or install something permanent, like a pool, garage, deck, or addition. You need to know where the easements are before you design anything.
- The property relies on a right of way for access, for example a shared driveway or a rear lot. Confirm the access is legally secured.
- A structure looks like it might cross a boundary, or a fence or driveway placement seems off.
- A neighbour relationship depends on a shared feature, like a mutual driveway, where you want the arrangement clearly understood.

When you can usually relax

A standard utility easement along the edge of a typical residential lot, with no building plans near it, is ordinary and rarely a practical concern. Most homes have something registered against them, and most of it never affects daily life. The point is not to panic at the words, but to understand which ones touch your actual plans.

Bottom line

Easements give someone a defined right to use part of your land, rights of way are about passage, and encroachments are structures crossing a boundary. Most are routine and surface on title, on a survey, or through title insurance. They matter most when you want to build, when you rely on an access right, or when a structure may be over the line. Your lawyer will flag what is registered against the property and explain what it means for you. If you have building plans or any doubt about boundaries, tell us early and we will advise whether a survey is worth getting.

This is general information about easements, rights of way, and encroachments in Ontario, not legal advice for your property. Whether a particular interest affects you depends on the registered documents and the facts. Talk to us about yours.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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