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Carefully Describe the Uses Allowed (and Not Allowed) Under Easements

Most easements last forever, so landowners should be very careful before allowing an easement to be recorded. Although there are many things to consider, the scope of the easement – **that is, the uses the easement holder may make of the grantor's property and the grantor's rights to use the property burdened by the easement** – should be carefully described.

An easement gives the easement holder the right to use land owned by another. The easement holder can only use the easement to the extent described in the easement; however, if the description is (as is common) very terse or unspecific, then the extent of the permitted use will be grafted onto the easement by rules that have developed over the centuries and which may be quite different from the rights the parties thought they had conferred or obtained.

The owner of the land burdened by an easement may continue to use the land, provided that the use does not unreasonably interfere with the easement holder's rights. Failing to specify the uses allowed by the owner of the land can lead to unexpected problems and restrictions.

There are **many issues pertaining to the scope of an easement which should be addressed in the easement**. A few examples are:

- Is the grantor of a right-of-way easement allowed to park cars on the sides of the right-of-way?
- May the grantor place gates on the easement and may those gates be locked?
- May the holder of a right-of-way easement install gas pipes, cables or other utilities underneath the easement?
- May the holder of a utility easement trim trees within the easement area (for instance, so that they are no closer than 25 feet from the transmission lines)?
- May the easement be paved?
- Who may or must maintain the easement, and at whose cost?
- Is the easement holder required to waive claims against the grantor, indemnify the grantor, insure the grantor or waive rights of subrogation against the grantor?

Easements are complicated. **The permitted use of an easement and the permitted use of the land burdened by**

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the easement should be addressed very carefully or disputes are likely to arise.



[Lee F. Gotshall-](#)
[Maxon](#)
(415)
273-7423
[Email](#)

[Nancy Lundeen](#)
(415)
273-7477
[Email](#)

[Lee A. Edlund](#)
(415)
273-7436
[Email](#)



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