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Easements and Rights of Way – Landowners Beware!

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Landowners should be very careful when asked to sign a Pipeline Easement, a Utility Right of Way, a Solar Easement or a Right of Way for an oil and gas company. The terms “Easement” and “Right of Way” are usually used as synonyms and we will not try to differentiate those terms in this article. What is important is that a landowner understand that in most all situations an Easement or Right of Way will be a permanent encumbrance on the landowner’s property.

Typically, a landowner is told by the person seeking the Easement or Right of Way that, the form they are offered “is a standard easement agreement” and “all your neighbors have already signed.” While the latter may be true – the first quote should be that the form being the landowner is offered “is the *Pipeline Company’s* standard easement agreement” or “is the *Utility’s* standard right of way agreement.”

Every word on an Easement or Right of Way is negotiable! Not only is the compensation for the Easement or Right of Way negotiable (which the Pipeline Company or the Utility will often describe in terms of dollars per acres), but also every word of the Easement or Right of Way is negotiable – and the landowner will want the compensation described in dollars per foot, not acres.

It is vital for a landowner to know the specific purpose of the Easement or Right of Way. A landowner should know whether or not the Easement or Right of Way is for an electric line, an underground pipeline, a surface pipeline, or several other potential purposes. Typically, the first paragraph of Easements or Rights of Way will broadly state what the purpose of the Easement or Right of Way is while also claiming a lot of additional benefits for the company seeking the Easement or Right of Way. For example, a Pipeline Company’s standard Easement or Right of Way might say “to replace, modify, abandon one or more pipelines for gathering oil and associated constituents, or for transporting any other substances, and any appurtenant facilities, including, but not limited to electrical and communications equipment and lines, meters, fittings, connections, over, under, above and across the following lands.” Landowners should negotiate this language to narrowly limit the Easement or Right of Way to the company’s intended use. For example, if the purpose of the Easement or Right of Way is to construct one underground pipeline to carry natural gas, then the first paragraph might say, “to locate, construct, install, maintain, operate, repair and remove one underground pipeline of [x-inches] in diameter for the sole purpose of transporting natural gas, within a strip of land [x-feet] wide as specifically described in the survey attached as Exhibit A.”

Some or all of the Utility’s or Pipeline Company’s “extra” words appear in most Easements or Rights of Way, whether a Pipeline Easement, a Utility Right of Way, a Solar Easement or a Right of Way for an oil and gas company. And, some or all of those “extra” words will likely cause the landowner problems in the future.

A typical situation occurs when a Utility approaches a landowner and says, "We are just putting in an electrical line and this is our standard form easement agreement." The landowner wants to be a good neighbor and signs without thinking of the consequences of all of the "extra" words quoted above. When the landowner wants to sell the property, he or she finds out that the electric easement allows the Utility to place one or more electric lines above or under any portion of the property (which often prevents the future construction of any buildings on the property without the written consent of the Utility).

This article describes potential problems with Easements or Rights of Way arising in only the first paragraph of these documents. Usually, even "simple" Easements or Rights of Way will have more than a dozen paragraphs, and some will contain multiple pages.

The second paragraph of many Easements or Rights of Way will provide that the document also covers any adjacent property and reversion or remainder interest of the landowner – which ties up additional acreage of the landowner. Thus, our message is – each word in each paragraph needs to be carefully read and understood.

Often Easements or Rights of Way are accompanied by documents titled "Temporary Access Road Agreements," "Permanent Access Road Agreements," "Temporary Work Space Agreements," and/or "Permanent Work Space Agreements." Each of these Easement and Right of Way related documents generally restrict the landowner's use of his or her land even more than the original Easement or Right of Way.

It is vital that a landowner read and understand every word of an Easement or Right of Way and related documents prior to signing any such document. And for the landowner to remember:

1. The Easement or Right of Way is a permanent encumbrance on the land.
2. Every word of an Easement or Right of Way is negotiable – and most words need to be negotiated to protect the landowner.

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