



What are Right of Way (ROW) Easements?

The dictionary defines an easement as a right held by one person to make use of the land of another; a right of way (ROW) is a strip of land acquired for use by railroad for tracks, county for road, or a path or route that may be lawfully used. The terminology of ROW and easement or the use of both terms is interchangeable with the meaning that there is a right established on ones property that allows another party to execute an action (construction and maintenance) on their property, such as a road, pipeline, electric line, etc.

| Type of Easements | Purpose |
|--|---|
| Temporary Easement Examples: <ul style="list-style-type: none"> • Slope easement on a road | <ul style="list-style-type: none"> • Usually are for short period of time • Generally cover one construction project • Needed during construction of the road but not needed to maintain |

| | |
|---|---|
| <ul style="list-style-type: none"> • Access to a construction site | <p>the road after the construction is completed</p> |
| <p>Permanent Easement</p> | <ul style="list-style-type: none"> • Stay with the property no matter who buys, sells or transfers the property to another party • Can be held on the property for up to 99 years in ND |

Another way to construct projects is by purchasing the land area in their entirety, this goes by the term of fee title, which means whoever is completing the project has full ownership of the project area. Many road projects from the earlier days were purchased this way by the County, State, or Federal governments. The Interstate and State highway system has many fee title ownerships across North Dakota.



ROW easements on a parcel of property gives the holder the right to use the property for that purpose, roads and utilities are usually the main uses of easements. They usually include maintenance of the project and the associated access to the project.

Again, how the easement is written and filed is the guidance for what an easement holder has for any action he performs on the easement area.

Many people are familiar with the 33 foot easement placed on all section lines in the State, this area is for public travelways only, usually roads and trails to facilitate public access. No utilities are allowed by this easement. The county or state can grant permission to use this area for utilities as long as the public safety for the road is not compromised by the utility being placed within the existing easement area.

The placement of fences, cattle guards, and other improvements within the easement area is controlled by whomever has jurisdiction of the road to protect the public safety on the use of the road. All payment of taxes and production of crops, hay, timber, etc. on the easement area stays with the property owner, under fee title all the payment of tax and any production goes to the fee title owner.

All easements are issued with a specific purpose, such as a road, pipeline, or other utilities and only that purpose can be used by a company on that area, one cannot use a road easement to construct another utility unless the easement specifically states that use in the written description of the easement. Only one project should be allowed per easement, that is, only one pipeline or other facility. An exclusive easement can restrict any other use in the easement area by the description of the easement.

ROW width varies by State and land owners, but in North Dakota the recommended county road width is 75 feet on each side of the ROW for a total width of 150 feet, with additional width as needed for drainage structures. Bridges or large culverts normally will need this additional width to accommodate the slope protection and energy dissipation needed by the structure.

Holders of a contract for deed do not control and cannot issue easements on the subject property. The owner of record of the property can grant the contract for deed holder permission in writing to issue an easement across the subject property.

Blanket easement is the term used for covering a legal land description in its entirety with an easement. Such as, if the SW1/4 of a section has a blanket easement a facility, the party with the easement can place the pipeline, power line, water line, road, or utility where ever it falls in the SW ¼ as legally described by the easement.

I recommend all easements be reviewed by a person familiar with easements before granting the easement, be it a lands person, lawyer, land surveyor, etc.

The Bakken Briefing will be sent to you periodically to address important transportation infrastructure topics. The Bakken Briefing is sponsored by the North Dakota Association of Oil and Gas Producing Counties

Please contact Curt with any questions or comments:
Curt Glasoe, Technical Support Representative
701-425-6384
curt.glasoe@ndsu.edu

or

Dale Heglund, NDLTAP Program Director
dale.heglund@ndsu.edu

701.328.9857

North Dakota State University does not discriminate on the basis of age, color, disability, gender expression/identity, genetic information, marital status, national origin, public assistance status, sex, sexual orientation, status as a U.S. veteran., race or religion. Direct inquiries to the Vice President for Equity, Diversity and Global Outreach, 205 Old Main, (701) 231-7708.