



ENCROACHMENT ISSUES

Title research uncovers the real story

BY BRIDGET LAUER

Recently, while conducting a title search for a utility company in New Jersey, I came across an unusual encroachment case. It was a home built entirely within a utility right of way. The local utility was conducting a transmission line upgrade, and the encroachment posed a significant risk that necessitated the complete demolition of the home. The property owners, who purchased the property in 2002, were unaware that a documented easement was issued to the utility company back in 1955. This unfortunate situation underscores the importance of conducting a thorough title search that dates back at least 60 years.

Typically, utility companies encounter less invasive problems, such as a stretch of fence or a swimming pool that crosses the border of an easement. In most cases, landowners are totally unaware of easement restrictions that impact their ownership rights. Someone who wants to build a garage, for

example, may not realize that there is an easement owned by a utility company that the development company granted when the house was built. Utility companies acquire these easements to access power lines or pipelines that run across private properties. It is a title researcher's job to uncover these encroachments and assist in resolving issues and preventing unwanted project delays.

License Agreements

There is a major difference between an easement and an encroachment. With an easement, there is an agreement between both parties, while an encroachment is unwanted by one of the parties. Most properties are subject to recorded public utility easements that serve the property. Examples include overhead or underground power lines, phone, cable, water and sewer easements. Although property owners

To determine if and when an easement or right of way was granted, title research at the county courthouse can uncover records dating back 100 years or more.



cannot interfere with the use of an easement, they can obtain license agreements to make improvements on their property.

There are two types of license agreements – internal and public. Both types clearly specify any restrictions, as well as a termination clause if applicable. A license agreement with a utility company gives a residential property owner permission to do a particular act or series of acts. While it may not be public record, it is still a legal governing document. Since license agreements are not transferable, a new homeowner may purchase a property without realizing that the shed in the backyard was built with a license agreement that has since become null and void.

A public agreement is similar except that it usually involves commercial properties and is filed of record in the County Recorder's office. A large paved lot at a local shopping center, for example, may be necessary for customer parking, but it requires a public agreement between the owner and utility company granting permission. The property owner still maintains their rights to the property, but the utility company also has the right to access their towers or equipment once the landowner is notified.

Identifying Encroachments

Right of way encroachments can pose significant hazards, especially in the case of downed power lines to ruptured pipelines. In one instance, a power line touched down into an unpermitted swimming pool that had been installed on an easement. Although no one was injured, just imagine what could have happened.

When a utility company owns rights of way and/or easements located near trees and plants, the company's vegetation management division will usually be charged

with ongoing maintenance. Their primary goal is to ensure uninterrupted service while identifying potential hazards. However, with residential properties, encroachments are not typically uncovered until a major project is underway.

At the onset of a project, utility companies will drive the route to see if there are visible encroachments and make note of any property that is encroaching. An overhead survey crew will take aerial photos using GIS, then add an overlay of historical land record maps that show details such as parcel numbers, streets, boundary lines and objects that may be in the right of way.

Reviewing the Records

Once an encroachment is identified, the research begins with an internal review of documents through a database or system that is searchable by parcel or landowner. If the utility company cannot locate the records internally, they will need to contact a title company to research public records. This is done to exclude any possibility that the encroachment is permitted through a public agreement.

Title research is typically conducted going back to when the easement or right of way was obtained, which can be 100 years or more. The reason for conducting such an extensive search is to obtain and validate the current rights of the utility company. If the utility company owns the parcel in fee simple, the title examiner will review it for any conditions or reservations that may exist. This research can reveal any specific rights that may have been granted to the property owner.

Property acquired through easement rights contain specific language tailored to meet the needs of the parties involved. All easements

have basic language allowing utilities to access, maintain and operate with specific metes and bounds. Easements can be more limited, restricting towers, voltage or number of wires. Documents should always be thoroughly examined to provide accurate information.

If easement agreements are not located through internal or public records, the right of way agent will need to contact the landowner in person or by certified mail to alert them of the utility project and the specific encroachment. If the landowner is not present or responsive, then a title search may be required. Most utility companies will work with the landowner to either remove the object or execute a license agreement. Many times the encroachments can be resolved without contest.

Summary

Utility companies negotiate easements so that they can access and conduct maintenance of power lines or pipelines that run across private property. Since property owners are typically unaware of an easement restriction that impacts their ownership rights, title researchers play a vital role in uncovering the kind of information needed to prevent unnecessary project risks and delays. 🌟



Bridget is Director of Property Research for CW Solutions and specializes in land title research for the telecommunications and utility industries. She is a Licensed Title Producer in New Jersey.