

Understanding the basics of utility easements



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We are often asked about the rights municipal electric utilities have to place, maintain, and expand utility facilities on land they do not own. In Wisconsin, municipal electric utilities have a statutory right to place their facilities within the public right-of-way, subject to the ordinances and rules adopted by the municipalities and state departments with jurisdiction over the right-of-way. [See Wis. Stat. §§ 182.017(1r) and 86.16(1)] However, if a utility wishes to place its facilities on private property outside of the right-of-way, an easement is required. This article provides a high-level overview of the most common ways utilities can acquire easement rights on private property.

Fundamentally, an easement is a right to use someone else's property for a specific purpose—in the case of a utility easement, for the installation and maintenance of utility facilities. Easements are most commonly created by a written document negotiated between the utility and the property owner, but they can also arise in other ways, such as through condemna-

tion, by "prescription," or by grant of an easement on a plat or a certified survey map. Once an easement has been created, it "runs with the land" and continues to burden the property even if the owner who granted the easement sells the property to someone else.

Written Easements

The most straightforward way for a utility to obtain the right to place its facilities on private property is to obtain a written easement from the property owner. The written easement should identify the property to which it applies, the utility having the right to use the easement, and the specific rights granted to that utility, and it should also be signed by all owners of the property.

It is important to carefully define the rights granted to the utility under the easement, including what type of facilities may be placed within the easement area, whether they may be placed above or below ground, what actions are authorized (e.g., construction, maintenance, repair, upgrades), and what rights the utility has to clear and maintain the easement area and surrounding property.

Written easements should be recorded with the County Register of Deeds so they can be indexed in the real property records. In that way, future property own-

ers are put on notice of the location and the terms of the easement (although easements do not need to be recorded in order to be legally enforceable).

Condemnation

If a property owner is unwilling to grant a written easement to a utility, the utility may condemn an easement using the process set out in Chapter 32 of the Wisconsin Statutes. Among other things, that process requires that the utility fairly compensate the property owner for the easement. If the condemnation is for a large electric generating facility or high-voltage transmission line, a utility must also first obtain a certificate of public convenience and necessity from the Public Service Commission. [See Wis. Stat. §§ 196.491(3) and 32.03(3)] The condemnation process can be lengthy and expensive, so negotiation of a written easement with the property owner is generally preferable.

Prescriptive Easements

Utility easements can also arise by "prescription" without any written agreement between the utility and the property owner. This is fortunate, as it is not unusual for utilities to have older electric lines that were installed without first obtaining a written easement. Under Wis. Stat. § 893.28 (2), if an electric utility's

lines or equipment have been maintained on private property for a continuous period of at least 10 years, then the utility has acquired a "prescriptive" utility easement over that property and may continue to use the property to the same extent it did at the beginning of the 10-year period.

Questions related to prescriptive easements often arise in the context of property owners wanting to perform construction that would require the relocation of an existing utility line for which there is no written easement. For example, if property owner wants to build a backyard swimming pool in a location where an underground electric line has been in place for 12 years with no written utility easement, the utility has acquired a prescriptive easement and is under no obligation to pay to relocate the line to facilitate the construction. If the line had only been in place for nine years, however, then the utility would have no easement rights and would either have to pay to relocate its electric line or condemn a utility easement in the current location and fairly compensate the property owner.

Because they are unwritten, prescriptive easements can be particularly difficult to keep track of and administer. If challenged, a utility may need to produce specific evidence

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about when and where its equipment was first installed and what types of activities the utility conducted in the easement area during the 10-year prescriptive period. This can be difficult for even the best record-keepers. For that reason and others, we strongly recommend replacing prescriptive easements with traditional written easement agreements whenever possible.

Platted Easements

Finally, utility easements may be granted by adding them to certified survey maps or subdivision plats that are recorded with the County Register of Deeds under Chapter 236 of the Wisconsin Statutes. This is how utility easements are most commonly created in new subdivisions, as it is an efficient way to grant ease-

ments across a large area all at once.

However, these platted easements often fail to include even the most basic details such as the name of the utility to whom the easement is granted or the specific rights and obligations of the utility and the landowner. This can lead to disputes between different utilities seeking to use the same easement or between a utility and a landowner about what type of

facilities the utility may install within the easement area. It can also make the platted easements difficult to vacate or relocate in the future. Thus, whenever possible, we recommend including a note on the plat or certified survey map that spells out the terms of any platted utility easements in greater detail or simply entering into a traditional written easement agreement instead. ●



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