

# Right of Way Agreements

**By David Howell**

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A right of way agreement is the contract between the property owner (grantor) and the party seeking the easement or right of way (grantee) on or across that property. The right of way or easement can be for utilities, roads, trails, pipelines, or whatever else egress or ingress is granted on a property.

The path of the easement is defined in the right of way agreement or contract. At times a definition is not set forth and the easement can cover the entire tract of land in question.

The length of time or duration of the contract or right to use the easement is defined in the right of way agreement. Or it is not. At times when there is no defined end or termination clause in the contract, it might go on forever or in perpetuity.

Other determinants are set out in the contract that determine various conditions such as damages to land, damages to crops, rights to add other fixtures or appurtenances to existing fixtures, etc. Almost anything that is negotiated between the grantor and grantee can be included in the easement or right of way contract.

Often there are provisions for mediation or arbitration should the parties disagree on provisions. Sometimes not.

The agreement should be the last word and the law, but it is always subject to interpretation. For the most part, the agreement are clear and precise as to rights and privileges of the grantee from the grantor. I believe that we will see more and more emphasis on the letter and intent of all parties regarding this type of contract.

I remember seeing one contract written in 1942 for a crude oil pipeline running several hundred miles through Texas. Everyone was boilerplate duplicated. Exactly the same terms and wording on each. In my mind, I can hear the right of way agent telling the landowner, "The Nazis are coming, the Nazis are coming!" So they all signed away rights of way in perpetuity. The line has not been used for years and the easement is not maintained and the taxes are relegated to "abandoned" status. The Texas Railroad Commission states the line as abandoned as far as their jurisdiction is concerned, but the pipeline company still claims it is theirs. Go figure. I don't think this sort of interpretation by pipeline companies will hold up when challenged. This is partially the reason there will be more regulation on these old systems and soon.