



Law you can use: Consumer Information Column **CAN THAT EASEMENT STAND?**

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Q: Can a company use an existing pipeline easement on my property to construct a new pipeline?

A: Ohio is crisscrossed with hundreds of miles of pipeline easements that were granted in a different era. Some date back to the 1800s. Their validity depends on whether the easement: was properly recorded; has been abandoned; contains an enforceable provision that provides for additional lines to be installed; and many other factors. To find out if your old pipeline easement can be used to install a new pipeline, you should ask a qualified attorney to review your easement document.

Q: The old pipeline easement on my property says that the company only has to pay pennies per rod to install a new pipeline. Can that be enforced?

A: In short, no. In such cases, even if the pipeline easement is otherwise valid, the compensation provision will not be valid. The Supreme Court of Ohio has held that decades-old compensation provisions are unenforceable due to factors such as inflation, increased land value and other changed circumstances that now render the old provision unfair and inequitable to the landowner. The company must pay the fair market value in today's world for the property it wishes to use.

Q: If I have an old easement, can the pipeline company put the pipeline anywhere on my property that it wants?

A: Old easements often describe easement boundaries as being the entire property and the property as being only the land that is bounded by some identified neighbors to the north, south, east and west. Even if such an old description is used, the easement does not extend to the whole

property and is limited to what was actually used in installing and operating the pipeline. To establish how much of the property was actually used for pipeline installation and operation, you may be able to reference old photographs of the pipeline installation. Or, if a pipeline goes through woods rather than farmland, you can determine the width that was actually used by calculating the width of the woods that were cleared. If the pipeline company wants to use an area larger than what was established by the original pipeline's installation and use, it must take that area by eminent domain and pay you just compensation.

Q: Can a company use an existing pipeline easement on my property to construct a larger pipeline?

A: If an easement must be used in a way that does not place unreasonable new burdens (called a "surcharge") on the property that it runs through. If an Ohio court finds that constructing a larger pipeline places unreasonable new burdens on your property, then the easement will not be permitted.

Q: What compensation will I receive if the pipeline takes my property through eminent domain?

A: You are entitled to: 1) the value of the property taken and 2) the damage to the remainder of the property. The value of the property taken is determined by the fair market value of similar property in today's marketplace. The damage to the remaining property includes the negative effect of the pipeline installation on the value of your entire property, and not just the area where the pipeline is installed. Land containing a large pipeline carrying flammable materials like natural gas petroleum is considered to be less valuable than comparable land that does not have a pipeline. You are entitled to be compensated for

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that decrease in value, which is often greater than the value of the property that is actually used for the pipeline. Other common elements of damage include crop damage, damage to drain tile and contamination of topsoil. You may also be entitled to compensation for other damages, but these can only be determined by careful inspection of the land involved.

Q: Does a pipeline company have the right to enter my property before eminent domain proceedings?

A: Yes. Ohio law permits private pipeline companies that transport natural gas and petroleum to enter your land to survey before any formal proceedings begin. However, the company must give you at

least 48 hours' notice. You are also entitled to receive compensation for any damages to your land, crops, structures and personal property resulting from the company's entry onto your land. You should consult with an attorney before signing documentation providing access and/or permission to a pipeline company.

This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). Michael Braunstein, a principal in the law firm, Goldman & Braunstein, LLP, which represents landowners in eminent domain cases, prepared this article. The column offers general information about the law. Seek an attorney's advice before applying this information to a legal problem.