

GRANT OF RIGHT OF WAY (ROW) INFORMATION FOR PIPELINES, POWER LINES, ETC.

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As our society grows there are more demands for energy and utility infrastructure. Public and private companies seek routes to build that infrastructure. Representatives or land men often contact landowners to acquire the right to cross their land (right of way) for a specific purpose such as power lines or pipelines.

RIGHT OF WAY DEFINITION: Right of way is a term subject to different meanings. In the context of property law, it is the right to travel over someone's land and to have the reasonable use and enjoyment of their property as long as it is not inconsistent with the owner's use and enjoyment of the land.

COMPENSATION: Usually the landowner is paid a one-time fee in advance. The fees are usually calculated on a per foot or per rod (16.5 feet) basis. For example, a pipeline company may ask a landowner to grant a right of way 30 feet wide for a one-time payment of \$5.00 per foot.

ROW compensation does not include payment for damages to land, crops, fences, timber, livestock, and for damages to other personal property caused in the construction, repair or removal of the pipeline. Additional compensation should be received for these damages. When appropriate, grantee should be obligated, at grantee's expense, to re-seed and establish native grass cover on the right-of-way and the adjoining land used in the structure construction.

Additional compensation should be received for above ground obstructions, such as valves, pig launchers, substations, meters and other above ground installations.

LEGAL CONSIDERATIONS: The document should be a "Grant of Right of Way" not an "Easement". Easements generally run with the land and have no expiration date. The Right of Way (ROW) should have a clear expiration date.

The ROW should be non-exclusive - you want to be able to potentially grant a right of way for another use on the same land. Keep each ROW as narrow as possible. For example, a right of way for an underground fiber optic line and an underground pipeline could be granted on land 15' apart. Both ROWs can be 30' wide, but they can share the same workspace. It is not uncommon in areas of high activity for ROWs to overlap.

A ROW should have a metes and bounds legal description and plat attached showing where the utility will construct and showing existing structures and landmarks. Make sure the legal description on the plat and the legal description in the agreement match.

A ROW should be for a minimum term (no greater than 30 years). Do not allow a right of way to be permanent. That way, at expiration the landowner can re-negotiate the ROW fee at current rates.

If possible, a pipeline right of way should be no wider than 30 feet. Rates of \$5 per linear foot are not uncommon for a 6" pipeline. The payment should increase based on size of pipeline, i.e. a 6" line should pay more than a 4" line.

If for a pipeline, the ROW language should limit construction to one line and should specify the location of the line (require a plat to be attached to show the location of the line and existing structures). Some rights of ways try to say "pipeline or pipelines" in the document.

The line should be buried to a depth of at least 48 inches below the surface, measured from the surface to the top of the line.

RESTORATION BOND: A restoration bond is like an insurance policy and is purchased from bond companies the same way a land owner purchases insurance from an insurance company. The bond insures that restoration and any damages are repaired, even if the company goes bankrupt. It is very common for a governmental entity to require a restoration bond before granting a right of way, so private landowners should also require a restoration bond.

OTHER INFORMATION: The flow line from an oil and gas well to the separator and tanks does not require a ROW. If an oil and gas pipeline is on your property and contains material from wells other than yours, this is called a sales line and a ROW is required.

Soil topsoil should be segregated so it can be placed on top in backfilling.

If the right of way is abandoned, the right of way agreement should require that any structures be removed within twelve months from abandonment, and a release of the right of way filed of record by the grantee. If the landowner wishes to take ownership of the structures, the right of way agreement can state that. A restoration bond insures that any structures of pipelines are removed if the agreement requires it.

No consent from grantee should be necessary for the landowner to fence, or place temporary structures on the land, or to excavate for irrigation, in the proper enjoyment of the land for agricultural purposes.

Grantee should agree to compact, backfill and maintain, at original level, the land on which the pipeline is located.

IT IS RECOMMENDED EACH LANDOWNER CONSULT HIS OR HER ATTORNEY FOR ADDITIONAL PROVISIONS OR INTERPRETATION

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