



**Easements:  
Overhead Power Lines; Pipelines; Oil & Gas Development  
Protect Your Property & Maximize Your Return**

**1. Strategies on Negotiations**

- a. Gather your neighbors for better bargaining power
- b. Avoid confidentiality clauses - share information with your neighbors
- c. Don't sign the first offer
- d. Remember the agent's job is to get you to sign – don't believe everything the agent tells you as he/she is unlikely to be the person that will be involved in any construction on your property

**2. If You Cannot Agree**

- a. Condemnation is routinely threatened but it may or may not be applicable
  - i. Don't sign simply because of this threat until you know that's a risk
  - ii. Condemnation costs companies money - they prefer to settle
- b. Don't block the road – Companies may sue you for interfering
  - i. Standby charges can exceed \$100,000/day with some operations

**3. Maximize your Income**

- a. Ask for more money
- b. Limit the number, width and material to be moved within the easement
- c. Payment Options
  - i. Lump sum
  - ii. Annual payment
  - iii. Percentage related to product passing through line
  - iv. Combination of the foregoing
  - v. Calculate and demand payment for your loss of income from your current land use, ranching, farming, hunting, recreation

**4. Protect Your Property**

- a. *Basics*
  - i. Ask for alternate route if the proposed route doesn't work for you
  - ii. Ask for a defined construction season to a time period that works with your operations
  - iii. Ask for everything to be underground or limit the location of above ground appurtenances (Pipelines)
  - iv. Ask for a minimum depth (Pipelines)

- v. Ask for a specific location – only agree to a specific location with a specific width on the easement
  - 1. DO NOT agree to an ‘as-built’ easement
- vi. Ask for access to be limited solely to the easement route
- b. *Reclamation*
  - i. Include enough compensation to remedy lack of reclamation, or
  - ii. Include stringent protections to make sure reclamation happens
- c. *Term of the Easement*
  - i. Abandonment – Specify a time period for the easement to go away if it’s never built or if the use subsequently ends
  - ii. Temporary work – If extra space is needed for construction limit to a specific time period
  - iii. Be sure to define temporary workspace, identify the location and how much workspace is needed and the agreed payment for the workspace
- d. *Be Specific*
  - i. *Specify the type access roads and expected maintenance of those roads*
  - ii. *Be specific on cattle guards, gates, fences*
- e. *Reduce your Risks*
  - i. Delete any warranties or representations
  - ii. Agree upfront about how normal and customary damages are calculated i.e. crop damages or damages to fencing
  - iii. Add clauses on Indemnification, Insurance, and Assignment
  - iv. Consider the pros / cons to attorneys’ fees clauses

For more information or to schedule a meeting with Roger Richmond, please contact him at 970-824-7058 or [richmond@kellerlawllc.com](mailto:richmond@kellerlawllc.com). To speak with someone at our office, please call 877-529-2125.

KELLERLAW