

UNDERSTANDING EASEMENTS

Presented by Title Guaranty

When purchasing property in Hawaii, a buyer's due diligence should include carefully reviewing the title report to determine if the subject property is burdened and/or benefited by an easement right. What is shown on the title report could make or break the transaction.

For example, if the report reveals the neighbor has the right to use the property's driveway, the buyer should inquire about the ramifications of the neighbor's right. Are there any limitations? Is the easement exclusive or non-exclusive? Does the neighbor share the responsibility for the maintenance, repair, and liability of the driveway?

When buying property on a roadway that is not public, it is the title professional's obligation to determine if the property has a legal right of access over the road and report the findings in the title report. The buyer should ascertain if the right of access includes the burden of liability and the obligation to keep the road in good repair. Along with this responsibility, will fees need to be paid on a monthly or yearly basis?

Beachfront properties may be subject to public or private beach access easements. If it's public, a buyer should expect a fair amount of usage at all hours. If it's private, a buyer should try to determine how many lots have the right to use the access easement.

An easement is a non-possessory interest in another's land that allows the easement holder the right of use on property he/she does not own. The most common types of easements are for utility, view, and access.

Easements can be a complex matter when buying property in Hawaii. At Title Guaranty, our Title Officers' extensive experience with easements allows them to help buyers navigate the process to ensure both the buyer's and seller's rights are protected.

- Mike B. Pietsch, President/COO

In summary, when a property is burdened or benefited by easements, a buyer should clearly determine:

- What rights are included and who has the rights?
- Is there a maintenance agreement that addresses maintenance, repair, and liability?
- Will maintenance funds be collected and what are the consequences if funds are not paid?
- Do the rights run with the land?