

**Headline: Understanding Easements**

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At the recent CHOA Depreciation Symposium, I spoke about legal agreements that impact depreciation reports and future costs of a strata corporation. Easements are perhaps the most common of these kinds of legal agreements.

An easement is a legal right that a landowner (known as the "dominant" owner) has over land of another landowner (known as the "servient" owner). While a strata corporation does not own the common property – all of the strata lot owners in the strata plan own the common property as tenants in common – for the purpose of this article and understanding easements, think of your strata corporation as a landowner.

Here are five key things you need to understand about easements:

- the easement may be for the benefit of your strata corporation, in which case your strata is the dominant owner;
- the easement may be for the benefit of another landowner, in which case your strata is the servient owner;
- regardless of whether your strata is the dominant or servient owner, the easement may impose repair and maintenance obligations on your strata;
- this legal right over land of another landowner, even though it cannot be seen or touched like a building, is nonetheless a type of real estate, just like a strata lot is a type of real estate; and
- if the easement is registered in the Land Title Office, it is binding on all future dominant and servient owners.

Easements are either positive or negative. A positive easement gives the dominant owner the right to do something on the land of the servient owner. A negative easement gives the dominant owner the right to prevent the servient owner from using its land in a particular way. Let's look at some examples of positive easements.

A mixed-use strata development in Vancouver consists of two high rise towers above a low rise structure which has retail uses on the ground level and office uses on the levels above, with the parking facility for the entire development located in the low rise structure. The project is comprised of three separate strata plans: one for each high rise tower and the third for the remainder of the development. The parking easement is for the benefit of the two towers. For this easement, each tower strata corporation is a dominant owner; the strata for the remainder of the project, where the parking facility is located, is the servient owner.

A recreational conventional strata development in the Okanagan is located near to, but not on, a lake. There is no public road providing access to and from the lake. Instead, the strata development has the benefit of an easement for access to and from the lake over a narrow strip of a parcel of land that borders the lake. For this easement, the strata corporation is the dominant owner; the owner of the land bordering the lake is the servient owner.

A recreational bare land strata development on Vancouver Island is located near the ocean. After filing the strata plan in the Land Title Office, the developer installed a storm drainage system in portions of two of the bare land strata lots and granted an easement over those portions to the strata corporation. For this easement, the strata is the dominant owner; the owners from time to time of the two bare land strata lots in which the storm drainage system is located are the servient owners.

Finally, many strata developments have easements that are for the benefit of a local government or communications provider such as Telus, Shaw or Rogers. For this kind of easement, which is known as a "statutory right of way", the local government or communications provider is the dominant owner; the strata corporation is the servient owner. The one key thing you need to understand is that the dominant owner does not own any land adjacent to the land of the servient owner.