

Everything You Need to Know About Property Easements in Costa Rica

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Costa Rica has experienced an ample growth during the last two decades. Much of that growth is uncontrolled and can create confusion among land owners. The country has laws to protect property rights, some of which are unknown and usually go unused here. Easement laws protect property owners, so they can control what is built around them. Certain easement rights can be acquired over time, like the easements for the right of view or right of illumination. These and other important easement rights can also be transferred to another person acquiring a property making real estate property much more valuable under certain circumstances.

The Right of Easement is the real power a property owner has over someone else's property to make a specific use of it. From the point of view of a real estate owner, an easement constitutes a lien that restricts some property rights. In legal words, an easement is a right where the proprietor of a piece of land -called dominant estate-, has the right to make some specific actions or exercise a particular use of an adjoining property -called the servant estate-. An easement, to validly exist according to the law in Costa Rica, needs to give a usefulness or utility which satisfies and interest of another. No easement can be more extensive than the purpose it serves.

The different types of purposes include: economical, esthetic, environmental and conservational among others. They can also be expressed or implied. The basic content of an easement is the straight power that the owner of the dominant estate has over the servant estate. For example, the right to cross the servant estate's property for a right of way to the dominant estate's property, or to prohibit any construction or growing trees if it is an easement for the right of view or for the right of illumination. The various classifications of the easements are divided into continual and non-continual, apparent and non-apparent, legal and voluntary.

The main characteristics of easements are:

- A. They cannot be divided, which means if the servant estate is segregated, the new lots will carry the easement.
- B. They are accessory rights and cannot be separate from the property rights of the dominant estate.
- C. They can only be registered against a property different than the dominant estate, so the same property cannot be the dominant estate and the servant estate for the same easement. Continual easements are registered once and do not need intervention to operate. Some

examples of continual easements are: for the right of view, for electrical wiring, for aqueduct and for the right of illumination.

Non-continual easements are used at time intervals and depend on actions to operate, like an easement for the right of way. Non-continual easements cannot be acquired over the passage of time. Apparent easements are visible and conspicuous, revealing their use and existence, like the easement for the right of view or right of illumination. Non-apparent easements are not visible and conspicuous, making them hard to define, like an easement for underground services. It is important to note that the right of easement based on the passage of time can only be acquired on continual and apparent easements. Non-continual and non-apparent easements can only be acquired by agreement or in a last will.

Legal easements are established by law. Some example of legal easements are: A. In a town where the people might need to collect water from a river crossing a private property, a water collection easement can be created, B. Some properties with public road frontage are prohibited from construction without a previous authorization from the Costa Rican Transportation Department. Some institutions like the Electric Company can create easements by paying a compensation to the owner. Voluntary easements can be of any kind and created by agreement between two or more parties. To be valid they need to be recorded at the Registro Nacional -The Costa Rican Real Estate Records Department-.

The most common type of easements are:

- A. Easement for the right of way. It gives someone the right to travel across property owned by another person.
- B. Easement for the right of view. It restricts any building or landscaping which will restrict a property's scenic and open condition.
- C. Easement for the right of illumination. It will restrict any building or landscaping which will restrict a property's lighting.

Other easements imposed by governmental institutions are:

- A. Right of Public Services (ICE).
- B. Right of water flow (AYA).
- C. Right of oil flow (RECOPE).
- D. Right of Conservation (MINAET) and
- E. Right of Public Access (MOPT).

Easement rights can be protected with different kinds of Court procedures. Interdictos, or injunction lawsuits, are the most common in protecting easement rights. They can be effective if handled correctly and filed with proper arguments. If you have a valuable piece of property with great access, a wonderful view and other valuable intrinsic assets, Costa Rican easements laws can help protecting that because some other will be lost to progress making

your much more valuable.

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)