



## **EASEMENTS, RESTRICTIONS, COVENANTS & RIGHTS OF WAY**

On the title deed of the property, also known as a Certificate of Title, you will see who the owner is and any "Notifications" on matters which affect the title, with the most common of these being mortgages, leases, easements and covenants.

An easement is a right which some land, over other land. The Dominant over the Servient land. The most common types of easements are rights of way and easements for services. Rights of way are often a right of carriageway, which allows vehicles to use it, or a right of footway, less common in today's world. An example is in a battleaxe subdivisions, where one or more blocks have the right to use a part of land for access. The dimensions, position and terms of the right of way are usually defined when a subdivision is registered at the Land Titles Office.

The land comprising the site of the right of way still belongs to the servient block, but cannot be used so as to obstruct the permissible uses, so a building or even landscaping or steps which would interfere with access are not permitted. A right of way is for access, so parking of vehicles on it is not allowed. One problem which can arise particularly if the access is sealed can be maintenance, as unless there is a special provision in the document creating the right of way, there is no obligation on the servient block to keep the access area in good condition - the only obligation is to make it available and unobstructed.

An easement for services allows the defined part of the land to be used for services to be conveyed such as electricity, gas, water and telephone to the dominant land. The specific services permitted will be defined in the easement document, and an easement restricted to just sewerage is often described just as that, an easement for sewerage. Typically the services will be underground, although poles may be used unless prohibited. The servient block can still use the surface, perhaps for gardens, but as access is required for repairs or maintenance, the land owner should bear this possibility in mind when deciding how to improve that piece of land.

Covenants are like a private town planning scheme, and will define matters such as the use of the land, building sizes and standards, fencing and the like. A typical covenant in a subdivision will define permissible minimum building sizes, require only certain materials to be used, and sometimes ban fencing in front of the building alignment or require certain types of fencing.

As you can see, there can be unexpected surprises with easements and covenants, so be aware, and review the terms of any which affect your property!

Yours Sincerely  
**A & T LEGAL**

**Nicole Armitage**  
Principal Solicitor