

***Acquisition of Property Interests, Including Easements, Rights of Entry, License Agreements, Fee Simple; Eminent Domain, How to Navigate the Process Effectively***

Presented by:

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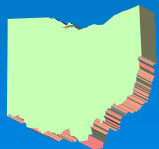
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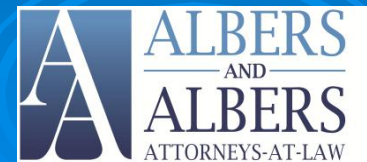
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Presented to the  
County Sanitary Engineers Association of Ohio  
2024 Winter Conference  
December 5, 2024

***The information contained in this presentation should not be relied upon as legal advice. Please consult your legal counsel to ensure compliance with the law.***

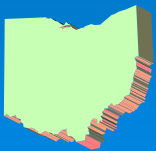


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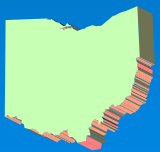
# 1. Definitions

- 1.1 Easement: An instrument which conveys an interest in real estate; usually recorded.
- 1.2 Right of Entry, Right of Access, License Agreement: An instrument which grants a right to enter upon or access property for a limited purpose and a limited period of time; usually not recorded.
  - Examples
- 1.3 Servient Tenement: Real estate which is burdened by an easement. (The property upon which an easement is located.)

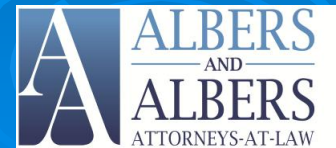


# Definitions (Contd.)

- 1.4. Dominant Tenement: Real estate which benefits from an easement.  
(There is not always a dominant tenement.)
- Examples

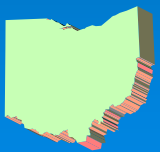


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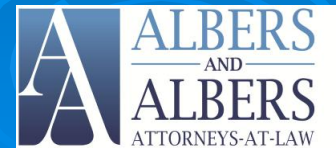


## 2. Easement vs. Easement Agreement

### 2.1. Simple Conveyance vs. Reciprocal Agreement - Examples



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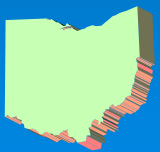


# 3. Statutory Rights of Entry

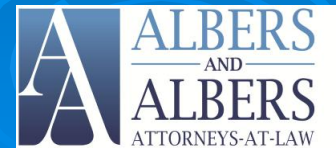
## 3.1. County Authority: R.C. 6103.02 (E)- Water; R.C. 6117.01 (F)- Sewer

R.C. 6103.02 (E) The county sanitary engineer or the county sanitary engineer's authorized assistants or agents, when properly identified in writing or otherwise and **after written notice is delivered to the owner at least five days in advance or mailed at least five days in advance by first class or certified mail** to the owner's tax mailing address, may enter upon any public or private property for the purpose of making, and may make, **surveys or inspections necessary for the design or evaluation of county public water supply facilities**. This entry is not a trespass and is not to be considered an entry in connection with any appropriation of property proceedings under sections 163.01 to 163.22 of the Revised Code that may be pending. No person or public agency shall forbid the county sanitary engineer or the county sanitary engineer's authorized assistants or agents to enter, or interfere with their entry, upon the property for the purpose of making the surveys or inspections. If actual damage is done to property by the making of the surveys or inspections, the board shall pay the reasonable value of the damage to the property owner, and the cost shall be included in the cost of the facilities and may be included in any special assessments levied and collected to pay that cost.

R.C. 6117.01 (F) Identical to 6103.02 (E)



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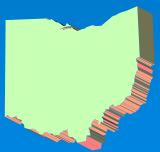


## 3. Statutory Rights of Entry (Contd.)

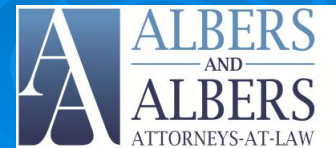
### 3.2. Regional Water and Sewer District Authority:

R.C. 6119.34 The **regional planning commission, the county planning commission**, or any regional water and sewer district undertaking the preparation of plans for the proper purification, filtration, and distribution of water or proper collection and treatment of sewage, or their authorized agents and employees, **after proper notice, may enter upon any lands, waters, and premises in the state for the purpose of making or preparing surveys, soundings, drillings, examinations, maps, or other data needed or determined necessary or proper for the preparation of such plans.** Such entry is not a trespass, nor is an entry for such purposes an entry under any condemnation proceedings which are then pending. The owner of such lands, waters, or premises shall be reimbursed for any actual damage resulting to such lands, waters, and premises, and to private property located in, on, along, over, or under such lands, waters, and premises, as a result of such activities.

### 3.3. Right of Entry Agreement



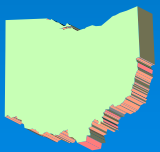
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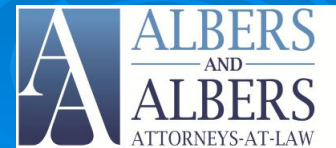
# 4. Easements- Common Issues

## 4.1. Who Can Convey as Grantor

- 4.1.1. All owners
- 4.1.2. Husband and wife
- 4.1.3. Husband, release of dower
- 4.1.4. Owner deceased
  - Open estate
  - Will vs. Intestate
- 4.1.5. Property owners association
- 4.1.6. Governmental subdivision
- 4.1.7. Corporations / Partnerships



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## 4. Easements- Common Issues (Contd.)

### 4.2. Access to Easement Area for Construction and Maintenance

4.2.1. Adjacent lands owned by Grantor vs. limited access

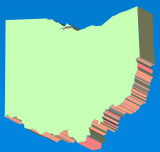
### 4.3. Maintenance of Easement Area

4.3.1. Landscaping, seeding, flowers, bushes, trees, other plantings

### 4.4. Shared Use vs. Exclusive Easement

4.4.1. Shared use is common

4.4.2. Cannot interfere with Grantee's use or maintenance, no liability for damages to other structures



## 4. Easements- Common Issues (Contd.)

### 4.5. Crop Damage

4.5.1. Fair market value to be agreed upon prior to removal

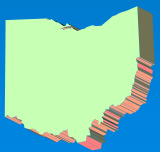
### 4.6. Stormwater Easements

4.6.1. Use specific language

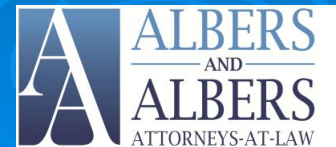
4.6.2. Responsibility for maintenance

### 4.7. Water and Sewer Taps for Easements

4.7.1. Limit to certain parcels and type of tap (residential vs. other). Limit duration if possible.

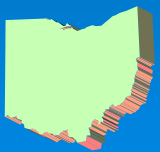


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## 5. Eminent Domain / Condemnation

- 5.1. See County Commissioner Association Handbook on Eminent Domain  
<https://ccao.org/wp-content/uploads/HDBKCHAP009-2011.pdf>
  
- 5.2. County Authority to Appropriate Under R.C. 163.01 to 163.22
  - 5.2.1. O.R.C. 6117.39- Acquisition or Purchase of Property (Sewer)
  
  - 5.2.2. O.R.C. 6117.48- Eminent Domain Proceedings (Trunk or Main Sewer)
  
  - 5.2.3. O.R.C. 6103.25- Acquisition or Appropriation of Property (Water)



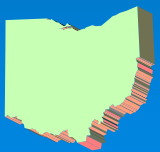
## 5. Eminent Domain / Condemnation

### 5.3. Previously Installed Facilities Not Located Within the Easement

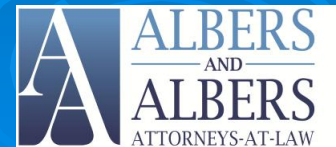
5.3.1. Adverse possession? (Open and notorious, 21 years, exclusive, hostile, continuous and uninterrupted)

5.3.2. Adverse possession analysis unnecessary. Why?

- 4-year statute of limitations on damages
- not a trespass
- criminal offense to tamper with a public facility
- eminent domain and injunction always available



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## 5. Eminent Domain / Condemnation (Contd.)

5.4. Quick Take Procedure, R.C. 6117.39- Sewer only; Property only (Not Improvements)

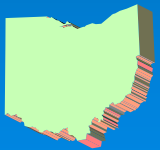
5.4.1. Quick Take procedure can only be utilized if there is a “Public Exigency”, defined as follows:

(1) For the purposes of division (B) of this section, any of the following constitutes a public exigency:

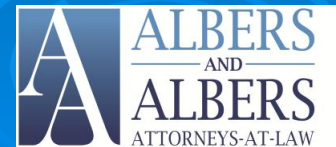
(a) A finding by the director of environmental protection that a public health nuisance caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions compels the immediate construction of sewers for the protection of the public health and welfare;

(b) The issuance of an order by the board of health of a health district to mitigate or abate a public health nuisance that is caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions and compels the immediate construction of sewers for the protection of the public health and welfare;

(c) With respect to an affected parcel of property, an improvement required as a result of a federally imposed or state-imposed consent decree that prohibits future sewer inflows, combined sewer overflows, or sewer back-ups.



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# Questions?

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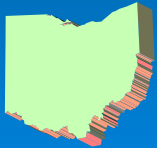
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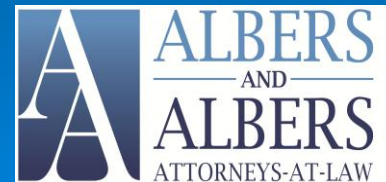
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