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By: [Moshe Lazarus](#)

Wednesday, January 4, 2006

**Dear Moshe:** I really enjoy your column, and am hoping you can help me. I was recently contacted by the telephone company, and was told that they will have to do some maintenance and repair work on the phone lines located at the back of my property. They told me that, in order to do the work, their employees will have to enter my property (together with their equipment), and that they may have to do some digging or excavation on my property as well.

I am hoping you can tell me — are they allowed to do this without my consent? Is there anything that I can do to prevent them from doing this work on my property, or at least to make sure that they keep the damage to a minimum? Should I be hiring an attorney to help me out with this matter? What do you recommend?

Thanks in advance for all of your help. I truly appreciate it.

### Answer:

Thank you very much for your interesting question. In order to answer you, I will first discuss the rights held by the telephone company with respect to your property, and will then discuss some measures you might take to protect yourself.

Ideally, when a person purchases a home, they would like to acquire title to the property "**free and clear**" of any liens or encumbrances against the property. This means that they would like to own the property absolutely, with no other person or entity holding any rights to or interest in the property.

However, it is fairly uncommon for a person to actually succeed in acquiring title that is truly "free and clear." To the contrary, it is quite common for a person's rights to his property to be subject and subordinate in some way to rights held by others with respect to the property. Of course, the rights held by others will typically be fairly innocuous, and will not serve to diminish or impair the owner's use and enjoyment of his home or property in any significant way.

One such right that occurs quite frequently is an "**easement**" held by a utility company with respect to the property. Generally speaking, an easement is a right granted by the owner of a property to another person or entity to enter or use the property for a specific

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purpose. When held by a utility company, the easement will typically grant the utility company the right to enter the property (or more commonly, a specific portion of the property) for the purpose of maintaining, repairing and replacing their equipment as necessary.

As the phone company has contacted you and informed you of its intention to enter your

property to repair and maintain its equipment, it is more than likely that they hold an easement granting them the right to do so. As it seems that you were not aware of the existence of this easement, I would venture to say that the easement was granted to the phone company some time before you purchased the property. This being the case, your ownership of and rights to the property are subject to the rights held by the phone company pursuant to the easement, and I am afraid that there is nothing you can do to prevent them from exercising their rights with respect to the premises.

However, there are some measures that I would advise you to take to ensure that your interests and property are protected to the greatest degree possible.

First, I would advise you to have your attorney review the title report and title insurance policy you obtained in connection with your purchase of the property. In so doing, your attorney will be able to determine whether or not the telephone company in fact holds the easement that they claim to hold against your property. Of course, if they do not, you would certainly be entitled to refuse to allow them to enter your property.

If the telephone company does in fact hold an easement against your property (which I believe is quite likely), I would advise you to have your attorney review your title insurance policy to determine whether or not you are entitled under your policy to reimbursement for damages suffered due to the existence of this easement. I will tell you that it is likely that the easement held by the telephone company was included as an exception to your coverage (such that you would not be entitled to so recover), but it certainly is worthwhile to look into this matter as well.

Finally, and perhaps most importantly, I would suggest that your attorney carefully review the document that created the easement to determine with precision the scope of and limitations on the telephone company's rights with respect to the premises. After having done so, you should be sure to insist that the telephone company not do anything it is not entitled to, and that they comply with all of the requirements imposed on them by the easement document.

For example, the right of the telephone company to enter and do work on your property is likely limited to a specific portion of the property, and you should certainly insist that they not exceed that limitation. Similarly, the easement document likely provides that the telephone company must, upon the completion of its work, restore the property to its condition prior to the commencement of their work, and you should certainly insist that they comply with this requirement as well.

Finally, I would tell you to take comfort in the fact that the easement held by the telephone company, and the work they intend to do pursuant to this easement, are not at



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all uncommon. To the contrary, the easement held by the telephone company is quite commonplace, and the inconvenience and damage you will suffer due to the performance of this work will likely be fairly minimal. As such, I would advise you to certainly take all of the measures and precautions that I have suggested, but at the same time, you not allow this situation to cause undue stress or anxiety.

I will conclude by wishing you much *hatzlacha* in your work with respect to this easement, and in all that you do.

**DISCLAIMER: The advice contained in this column is general in nature, and may vary greatly depending on the particulars of a given situation. For this reason, one should not act in reliance on the advice set forth in this column without first consulting with Mr. Lazarus or another attorney.**

*Moshe Lazarus, Esq., is an attorney specializing in real estate law. His firm represents a broad assortment of clients throughout New York and New Jersey with respect to all real estate related legal matters, commercial and residential. Moshe can be reached by phone at (845) 371-5636 or by e-mail to [mark@lazaruslawfirm.com](mailto:mark@lazaruslawfirm.com). For more information, please visit [www.lazaruslawfirm.com](http://www.lazaruslawfirm.com).*

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