

Easements Prevent Tiling Conflicts

A written easement should state that the farmer has the right to go onto the landowner's property to inspect, maintain, repair, install and replace tile lines.

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Tiling farmland is fairly common in eastern Wisconsin but considerably less common in the western half of the state. Of course, topography and differences in soil types are the reason for the difference. If you are considering tiling your farmland, there are many things to consider when installing tile lines. For example, the appropriate government agencies should be contacted for approval. In addition, the best location for the tile lines ought to be determined. Most importantly, if you want to extend tile lines or drainage ditches across your neighbor's land, a written easement should be obtained.

What is an easement?



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An easement is a property right in specific real estate for the benefit of someone other than the landowner of the real estate. One common type of easement is granting the owner of an adjacent landlocked parcel an easement for purposes of ingress and egress.

Easements can be created in writing, by implication, by prescription or by

necessity. When working with tile line or drainage easements, written easements or easements by prescription are usually most applicable.

Acquiring an easement by prescription is like acquiring property by adverse possession. In other words, once tile lines are installed and used on a neighbors' farm for at least 20 years and if no rent or other evidence of permission exists, an easement can be created as a matter of law. For example, assume a farmer receives verbal permission to run tile lines through his neighbor's property. After 15 years, the neighbor sells his farm and the new owner wants to rip out the tile lines. Legally, the new owner is likely able to remove the tile lines without recourse to the farmer. However, if the new owner owned the property for 20 years and then wanted to remove the tile lines, he is unlikely legally able to because the farmer now has an easement by prescription.

Get it in writing

Rather than relying upon legal theories to assure drainage rights, a well-written tile line or drainage easement would clearly state what easement rights are being granted. The written easement should state that the farmer has the right to go onto the landowner's property to inspect, maintain, repair, install and replace tile lines and should provide that if the landowner damages the tile lines, he repairs or replaces the tile lines.

Often, if I am representing a landowner, the written easement I draft would contain a provision not allowing access onto his property to repair or replace tile lines while crops are growing on the property. Or, at a minimum, the easement would provide that if any crops are damaged while the farmer is on the property to repair or replace tile lines, then the landowner would be reimbursed the fair market value for such crops that the farmer damaged. Absent such a provision, the farmer is typically not required to pay for damages to such crops since the easement specifically grants access. Another provision would require the farmer to provide advance notice to the landowner prior to entering onto the landowner's property.

If a tile line enters into a drainage ditch on the landowner's property, a written easement should allow the farmer the right to clean the drainage ditch. Of course, any appropriate government agencies should be contacted prior to cleaning the drainage ditch.

If two or more farmers have agreed to share tile lines or drainage ditches, there should be a written easement among all of the parties involved. This easement can provide for the sharing of the costs of installing, repairing and replacing tile lines or cleaning ditches. I believe it is important, though, to provide that any one farmer has the right to repair or replace shared tiled lines or clean shared drainage ditches at his cost without needing the consent of the other parties.

If a farmer is going to go through the time and expense of installing tile lines on his neighbor's property, it is well worth the effort for the farmer and landowner to get the terms of the easement in writing. Finally, tile line and drainage easements should always be recorded at the register of deeds office in the county or counties where the affected properties are located.

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