



## Impairment of Easements of Access and Way

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Impairment of Easements of Access and Way

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Courts in Tennessee have recognized that a property owner has an easement of access between his or her land and the abutting street, which extends to the center of the abutting street, absent any evidence to the contrary. <sup>[26]</sup> Although as noted in the preceding chapter some courts have found that an impairment of a property owner's easement of access can constitute incidental damages to the remainder of property when a portion of the property is taken in a condemnation action, other courts have held that any impairment of this right of ingress and egress constitutes a taking for which the owner may recover just compensation in an inverse condemnation action. <sup>[27]</sup> Thus property owners have been allowed to recover just compensation where the owner's access was destroyed by a change in the grade of a street or highway, <sup>[28]</sup> or by the construction of a fence, <sup>[29]</sup> or by the construction of a drainage ditch alongside a highway. <sup>[30]</sup> Incidental damages were allowed when curbing impaired full access from the abutting street. <sup>[30A]</sup>

In addition to an easement of access, a private property owner whose property abuts a public street or road has an easement of way, or right of passage, in the street abutting his or her property. <sup>[31]</sup> This easement of way is a private property right that exists in addition to the right to use the street in common with the general public. <sup>[32]</sup> This easement extends along any street or alley upon which the owner's property abuts, in either direction, to the next intersecting street. <sup>[33]</sup> This right usually is impaired by the closing of public streets or roads. <sup>[34]</sup> No recovery has been allowed when a two-way street abutting an owner's property has been changed to a one-way street, as this constitutes a valid exercise of the police power for which the payment of just compensation is required only in unusual circumstances. <sup>[35]</sup>

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### Notes:

[26] *Blevins v. Johnson County*, 746 S.W.2d 678 (Tenn. 1988); *Knierim v. Leatherwood*, 542 S.W.2d 806 (Tenn. 1976); *City of Memphis v. Hood*, 208 Tenn. 319, 345 S.W.2d 887 (1961); *Illinois Central Railroad Co. v. Moriarity*, *supra*; *Hamilton County v. Rape*, 101 Tenn. 222, 47 S.W. 416 (1898); *Knox County v. Lemarr*, *supra*; *Shelby County v. Dodson*, *supra*.

[27] *Illinois Central Railroad Co. v. Moriarity*, *supra*; *Hamilton County v. Rape*, *supra*; *Knox County v. Lemarr*, *supra*; *Shelby County v. Dodson*, *supra*.

[28] *Illinois Central Railroad Co. v. Moriarity*, *supra*; *Hamilton County v. Rape*, *supra*; *Knox County v. Lemarr*, *supra*; *Shelby County v. Dodson*, *supra*.

[29] *Spence v. Cocke County*, 61 Tenn. App. 607, 457 S.W.2d 270 (1969).

[30] *Morgan County v. Neff*, *supra*.

[30A] *City of Sevierville v. Green*, 125 S.W.3d 419 (Tenn. App. 2002).

[31] *Shelby County v. Barden*, 527 S.W. 2d 124 (Tenn. 1975); *Sweetwater Valley Memorial Park, Inc. v. City of Sweetwater*, 213 Tenn. 1, 372 S.W.2d 168 (1963); *Illinois Central Railroad Co. v. Moriarity*, *supra*; *Tate v. County of Monroe*, 578 S.W.2d 642 (Tenn. Ct. App. 1978); *East Park United Methodist Church v. Washington County*, 567 S.W.2d 768 (Tenn. Ct. App. 1977).

[32] *Shelby County v. Barden*, *supra*; *Illinois Central Railroad Co. v. Moriarity*, *supra*; *East Park United Methodist Church v. Washington County*, *supra*.

[33] *Illinois Central Railroad Co. v. Moriarity*, *supra*; *East Park United Methodist Church v. Washington County*, *supra*.

[34] *Shelby County v. Barden*, *supra*; *Graham v. Hamilton County*, *supra*; *Sweetwater Valley Memorial Park v. City of Sweetwater*, *supra*; *East Park United Methodist Church v. Washington County*, *supra*.

[35] *City of Memphis v. Hood*, 208 Tenn. 319, 345 S.W.2d 887 (1961); *Ambrose v. City of Knoxville*, 728 S.W.2d 338 (Tenn. Ct. App. 1987) See also *Tate v. County of Monroe*, *supra*.

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