



NAVAJO COUNTY

ROAD EASEMENT ENFORCEMENT GUIDELINES

1. INTRODUCTION

Many deeds, subdivision plats and other documents recorded in the County Recorder's Office contain language granting an easement over private land for use as a road (or making a dedication of private land for use as a road). In many cases, no road has ever actually been built or used. (There are technical differences between an "easement" and a "dedication." These guidelines will generally refer to them both as "rights of way.")

Navajo County may not have asked for the right of way or reviewed the document that was recorded. The property owner or developer may have recorded it without contacting the County. The document may be a do it yourself form, and the language may be unclear -- or it may not even meet the legal requirements for a valid right of way.

These guidelines explain when the County will (or will not) become involved in a dispute concerning a right of way. These disputes typically involve one of the following situations:

- Fred is putting up a fence, gate or other obstruction where Alice thinks there is a right of way that should remain open; or
- Alice is pulling down a fence, cutting a lock or removing an obstruction that Fred thinks he should be allowed to keep in place because there isn't any right of way; or
- Alice claims that Fred is trespassing on her property, while Fred claims he isn't trespassing because there is a right of way across Alice's property.

The above situations are discussed in Sections 2 and 3. If the dispute is a matter of genuine public interest, involving a public right of way, the County may become involved. The County will not become involved, however, when we cannot legally do so or do not have the resources to deal with a dispute that is really more of a "neighborhood feud" than a matter of public concern.

2. COMPLAINTS THAT SOMEONE IS BLOCKING A RIGHT OF WAY WITH A GATE, FENCE, POST OR OTHER OBSTRUCTION

2.1 ACTIONS THE COUNTY MAY TAKE. When a complaint is received about someone blocking a right of way, the County may take no action, civil action or criminal action, depending on the circumstances.

2.2 NO ACTION. The County will investigate such complaints but will generally not take any action in the four situations discussed in Sections 2.2.1 through 2.2.4:

2.2.1 PRIVATE EASEMENT. The recorded document may create only a private easement rather than a public right of way. The County has no interest in, and cannot enforce, a private easement.

2.2.2 INVALID OR CONFUSING DOCUMENT. The recorded document may be too confusing to tell what was intended or may not meet the legal requirements for a valid right of way. The County Attorney's Office will provide guidance to the Sheriff's Office and the Public Works Department in interpreting the legal effect of unclear documents. The County will generally not become involved unless we have a strong reason for trying to prove the document creates a public right of way.

- 2.2.3 ROAD CREATED BY USE ALONE / NO RECORDED PUBLIC RIGHT OF WAY.** A road may exist on the ground and have been used for years but may not have been formally created by a document recorded in the County Recorder's Office. The County will generally not become involved because a public right of way cannot be created by use alone. There must be a recorded public right of way. If there are any enforceable rights in a road that has been created by use alone, they are private rights and will have to be enforced by the private parties and their attorneys (see Section 2.5).
- 2.2.4 NO IMMEDIATE NEED FOR PUBLIC WORKS DEPARTMENT TO REMOVE OBSTRUCTION.** The recorded document may create a public right of way, but there may be no "immediate need" for the Public Works Department to remove the obstruction. The Public Works Department does not have the resources to remove every obstruction from every public right of way, particularly if the County did not ask for the right of way in the first place.
- 2.2.4.1 IMMEDIATE NEED.** The Public Works Department will decide whether there is an immediate need for the obstruction to be removed.
- 2.2.4.1.1** An immediate need will be found to exist if the public right of way has been formally accepted into the County maintenance system or formally designated as a primitive road, or if the Public Works Department has granted someone a permit to do work in the right of way. In these situations, the County will generally take civil action as described in Section 2.3 (but may take criminal action as described in Section 2.4).
- 2.2.4.1.2** If no immediate need is found to exist, the persons who are involved in the dispute will generally have to resolve the problem through private action as described in Section 2.5. In an apparent emergency, or to avoid a breach of the peace, the Sheriff's Office may take temporary action as described in Section 4.2.
- 2.2.4.2 WARNING LETTER EVEN IF NO IMMEDIATE NEED.** Even when the Public Works Department decides there is no immediate need to remove the obstruction, the County may -- if the right of way is clearly public -- send a warning letter reminding the violator that the fence or other obstruction will eventually have to be removed when the right of way is needed. The letter will come from either the Public Works Department or the County Attorney. (Once a right of way has been dedicated or granted to the public, a property owner cannot defeat the public's rights by erecting a fence or other obstruction, even if no one objected to the obstruction and even if it has remained in place for many years. When the right of way is needed for public purposes, the obstruction will have to be removed by the property owner at his expense. If the County must do this, it will charge the property owner for the work.)
- 2.3 CIVIL ACTION.** The County will generally take civil action when the right of way is clearly public and the Public Works Department has decided there is an immediate need for action.
- 2.3.1 WARNING LETTER.** The first step is generally a warning letter describing the problem and giving the violator a reasonable deadline to correct it. This may range from a few days to several months, depending on the seriousness of the situation. The letter will come from either the Public Works Department or the County Attorney's Office.
- 2.3.1.1** In serious situations, the Public Works Department (with the advice of the County Attorney's Office) may immediately remove the obstruction with no warning letter and charge the cost to the violator. The Public Works Department will generally give the violator some written or oral notice of the removal, but this may not always be possible.
- 2.3.2 REMOVAL.** If the warning letter does not get results, the Public Works Department may remove the obstruction (at the expense of the violator) or ask the County Attorney's Office to file a civil suit in the Superior Court to make the violator remove it.
- 2.4 CRIMINAL ACTION.** Criminal action is generally the last resort and is reserved for situations where the problem is immediate and serious or the violator has been uncooperative or is a repeat offender. Obstructing a public right of way is a class 3 misdemeanor under A.R.S. 13-2906, and other criminal statutes may apply depending on the circumstances.
- 2.5 PRIVATE RIGHTS WHEN COUNTY TAKES NO ACTION.** When the County declines to become involved for one of the reasons described in Sections 2.2.1 through 2.2.4, the persons who are involved in the dispute will have to resolve it as a private civil matter, using their own attorneys and

title companies. The court may grant an injunction requiring the obstruction to be removed or award money damages for any harm caused by the obstruction. Neither the Sheriff's Office, the Public Works Department, the County Recorder's Office nor the County Attorney's Office can provide advice or guidance. (In an apparent emergency, or to avoid a breach of the peace, the Sheriff's Office may take temporary action as described in Section 4.2.)

3. COMPLAINTS THAT SOMEONE IS TRESPASSING OR REMOVING A FENCE, GATE, ETC.

- 3.1 **ACTIONS THE COUNTY MAY TAKE.** Such complaints generally involve allegations of "criminal trespass" or "criminal damage." Depending on the circumstances, the County may take no action or criminal action.
- 3.2 **NO ACTION.** The County will investigate such complaints, but no further action will be taken if the status of the property and the rights of the parties are not clear.
- 3.2.1 The status of the property or the rights of the parties may not be clear because the recorded document fails to make clear what was intended, where the right of way is supposed to be located, or who has the right to use the right of way. If the status of the property or the rights of the parties aren't clear, it is impossible for the Sheriff's Office and the County Attorney's Office to successfully prosecute a criminal case.
- 3.3 **CRIMINAL ACTION.** If the status of the property and the rights of the parties are clear, the matter will be processed like any other criminal complaint. This is true regardless of whether the property is public or private. A citation may be issued for criminal trespass (A.R.S. 13-1502), criminal damage (A.R.S. 13-1602) or whatever violation fits the particular circumstances.
- 3.3.1 **EMERGENCIES.** Even where the status of the property or the rights of the parties aren't clear, the Sheriff's Office may take temporary action in an apparent emergency, or to avoid a breach of the peace, as described in Section 4.2.
- 3.4 **PRIVATE RIGHTS WHEN COUNTY TAKES NO ACTION.** When the County declines to take action (or criminal charges are dismissed), the persons who are involved in the dispute will have to resolve it as a private civil matter, using their own attorneys and title companies. The court may grant an injunction prohibiting the removal of the gate or fence or award money damages for any harm caused by the trespass. Neither the Sheriff's Office, the Public Works Department, the County Recorder's Office nor the County Attorney's Office can provide advice or guidance.

4. COMPLAINT PROCEDURE

- 4.1 **ROUTINE COMPLAINTS.** Routine (non-emergency) complaints involving any of the above situations should be made or referred to the Public Works Department in Holbrook. If they are received by the Sheriff's Office and the situation does not seem to be one where an emergency exists or a breach of the peace is imminent, the caller should be referred to the Public Works Department to clarify whether there is a right of way and whether it is public or private. The Public Works Department will then provide a response to the caller by telephone or in writing. If necessary, the County Attorney's Office (Civil Deputy assigned to the Public Works Department) will help interpret the recorded documents.
- 4.2 **EMERGENCIES.** There may be circumstances where a medical emergency (or other emergency) seems to exist, or a breach of the peace seems likely, and the Public Works Department is unavailable or cannot provide immediate clarification. In these circumstances, the appropriate response will require an exercise of judgment by the responding Deputy Sheriff. If a road appears to receive regular use or be needed to reach occupied property, requiring the obstruction to be temporarily removed pursuant to A.R.S. 13-2906 may be the safest procedure to resolve the emergency or preserve the peace until the status of the property and the rights of the parties can be clarified.
- 4.3 **CRIMINAL VIOLATIONS UNRELATED TO STATUS OF PROPERTY.** If there is a criminal violation having nothing directly to do with the status of the right of way -- for example, one of the parties threatens or assaults the other -- appropriate criminal action should obviously be taken.

5. FINAL THOUGHTS

Most disputes such as those described in these guidelines can be avoided by using an attorney or title company when you buy or sell property. The County cannot spend its limited resources on disputes it did not create and that could have easily been avoided if the parties had gone to attorneys or title companies in the first place.

Anyone trying to create a document having a legal effect on real property -- such as a public right of way or private easement -- should use an attorney or title company. Real estate law can be extremely complicated. It is very easy to create a document that fails to accomplish what you wanted (and it can be very difficult to correct the problem once the document has been recorded). The County cannot provide assistance in creating or interpreting documents (unless the right of way is a public one the County has requested).

Citizens may think that County officials and employees are being uncooperative when we decline to help them interpret documents or refuse to give them advice as to what they should do. These are legal questions, however, and they must be left to the person's own attorney or title company. The Sheriff's Office, Public Works Department and County Recorder's Office are not qualified or authorized to give such advice, and the County Attorney's Office is prohibited from giving legal advice to private citizens. It can be dangerous for the County (and misleading to the citizen) to attempt to do so. Even if County officials or employees think they know the answer, the temptation to give advice on private legal problems must be avoided.

6. ABANDONMENT.

There is a process by which public rights of way can be eliminated (sold or abandoned) if they are no longer needed. The Public Works Department has application forms and can give general information. This process requires formal action by the Board of Supervisors.

**“SOMEONE IS THREATENING TO FENCE OFF
A ROAD I’VE BEEN USING FOR YEARS”**

Lance B. Payette, Chief Deputy, Navajo County Attorney

People often ask the Sheriff or the Public Works Department to take some action involving a road. A common situation is where someone has threatened to put a fence or a locked gate across a road that has been used for years. It is important to understand when the County can -- and cannot -- become involved.

Public roads are those established by **an easement granted to the public (or the County) or a dedication of the actual land (“fee ownership”) to the public (or the County)**. This will be shown on a recorded plat, map or survey, or in a separate recorded public easement or deed of dedication. If there is a public easement or dedication, **the County holds the road as trustee for the public and can** take action if someone is threatening to interfere with the use of the road. This action might be a letter of warning from the Public Works Department or the County Attorney, a citation by the Sheriff for obstructing a public road in violation of A.R.S. 13-2906, or the filing of a civil or criminal complaint in court. (**Maintenance** is a separate issue. The County maintains public roads only if they have been **formally accepted into the County maintenance system.**)

Not all roads are public. If a road exists by virtue of a **private easement** (a recorded easement from one property owner to another, as opposed to one granted to the general public), this is **not** something the County enforces. If the person who owns the land is “unreasonably interfering” with the use of the private easement, this is generally a matter to be resolved between the owner and the users or by a civil complaint filed in court by the users. Similarly, **the roads in a subdivision may be private rather than public.** Subdivision roads are generally public, but not always. You have to look at the plat to see whether they have been granted or dedicated to the public. If they have not, the situation is the same as with a private easement -- the County cannot become involved, and any problems generally must be resolved between the lot owners or through the homeowners association.

There are situations where there is a public easement or dedication, but **the actual road is located outside the public right of way.** Here as well, the County generally cannot become involved if the problem is on a portion of the road outside the right of way. The people who have been using the road may have acquired some “prescriptive rights” (as described in the next paragraph), but this is a private matter to be resolved between them and the property owner.

There are situations where there is **no recorded right of way -- public or private.** The road has simply “evolved” over the years. Again, this is not something the County can become involved in. If the road has been in **regular and continuous use for 10 or more years**, the people who have been using it (or even the general public) may have acquired a **“prescriptive easement”** (also known as an “easement by adverse possession”). They may be able to establish their right to continue using the road and prevent the property owner from unreasonably interfering. This may require the filing of a civil complaint in court. (By the same token, if the users cannot establish a prescriptive easement, the property owner may be within his rights in putting up a fence or gate.)

Lastly, there are many areas where there is **a public right of way but no road.** In other words, the right of way exists only “on paper.” Even though there is no road, **the County still controls the right of way and has the same enforcement rights as if there were a road.** A property owner cannot simply clear a road or put up a fence because this seems like a good idea. Any work within the right of way requires **a permit from the Public Works Department.**

Unless the status of the road and the rights of the parties are clear, the Sheriff’s Office generally cannot become involved in disputes concerning it. If there is any uncertainty as to whether a road legally exists, whether it is public or private, etc., this must be resolved as a **civil matter** between the persons involved in the dispute.

We will be happy to tell you if the road is a public one according to our records. If it is not, however, we cannot advise you as to what you should do. It is always better to seek the advice of an attorney or title company than to risk liability for yourself by simply tearing down a fence or a gate or threatening your neighbor.