

WA State ‘Right of Way’ Liabilities Summary

Concerning liabilities to the party that is granted the right of way access, if there is any ground soil contamination.

In Washington State, the party granted a right-of-way easement can be held liable for ground soil contamination in certain circumstances, even if they didn't directly cause the contamination.

Here's a breakdown of the key factors involved:

- **Model Toxics Control Act (MTCA):** Washington's MTCA establishes a strict liability standard for hazardous substance releases. This means that liability can be assigned regardless of who is at fault for the release. The MTCA defines cleanup and prevention of contaminated sites.
- **“Potentially Liable Person” (PLP):** Under the MTCA, a party granted a right-of-way could be considered a “potentially liable person” if their actions or inactions are deemed to have “caused or contributed” to the contamination, according to the Washington State Department of Ecology. This may include:
 - Current or past facility (property) owner or operator.
 - Anyone who arranged for disposal or treatment of hazardous substances at the site.
 - Anyone who transported hazardous substances for disposal or treatment at the site, unless the facility could legally receive the hazardous materials at the time of transport.
- **“Innocent Purchaser” Defense:** While some defenses exist under the MTCA, the “innocent purchaser” defense, which protects a person from MTCA liability if they had no knowledge or reason to know of a hazardous substance release at the time of purchase, may not apply if the granted party's actions, even unintentional, caused or contributed to the contamination, as illustrated in the case of *Grey v. Leach*.
- **Due Diligence:** Thorough due diligence before obtaining a right-of-way, including environmental assessments, can help identify potential contamination and mitigate the risk of future liability. If contamination is discovered, it's advisable to work with the current owner to conduct necessary testing and negotiate an agreement on liability for any future cleanup.
- **Contractual Agreements:** Washington state courts generally honor contracts between parties that allocate liability for environmental contamination. This emphasizes the importance of carefully drafting and reviewing the right-of-way deed to explicitly define liability responsibilities regarding environmental issues.

In summary, a right-of-way deed itself doesn't automatically confer liability for existing contamination on the granted party. However, under Washington's MTCA, the granted party can be held liable if their actions or inactions are found to have caused or contributed to the contamination.

Thorough due diligence and explicit contractual agreements are crucial for minimizing such risks. It's recommended to consult with a qualified real estate attorney to understand specific obligations and potential liabilities in any given situation.



STEWART TITLE COMPANY

"A Tradition of Excellence"

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MAY 27 9 38 PM '94

BY THE DIVISION OF
RECORDS & ELECTIONS
KING COUNTY

WHEN RECORDED RETURN TO City Clerk
Name City of Renton - Public Works

Address 200 Mill Avenue South

City, State, Zip Renton, WA 98055

Statutory Warranty Deed

THE GRANTOR Boeing Company

for and in consideration of FIFTY FOUR THOUSAND SIX HUNDRED SEVENTY DOLLARS (\$54,670.00)

in hand paid, conveys and warrants to City of Renton

the following described real estate, situated in the County of King, State of Washington:

PARK AVENUE
RIGHT-OF-WAY ACQUISITION

LEGAL DESCRIPTION
PARCEL TAX ID NO. 756460-0055-04
Ref. No E006

A Right-of-Way acquisition over, upon and across a portion of Lots 1 through 13, Block 11, Renton Park Plat, according to the Plat thereof, recorded in Volume 10 of Plate, Page 97, in King County, Washington; Except that portion of said Lot 13 conveyed to the City of Renton by deed recorded under Recording Number 7203140338.
SECTION 8, TOWNSHIP 23N, RANGE 5E, W.M.

Said acquisition more particularly described as follows:

BEGINNING at a point on the North line of said Block 11 said point being 61.74 feet East of the center line of Park Avenue North, as measured at right angles; thence South $40^{\circ} 41' 33''$ West a distance of 30.88 feet; thence South $00^{\circ} 57' 29''$ West, parallel to the West line of said Block 11, a distance of 135.59 feet; thence South $04^{\circ} 14' 16''$ West a distance of 179.61 feet; thence North $83^{\circ} 25' 24''$ West a distance of 0.47 feet to said West line; thence North $00^{\circ} 57' 29''$ East along said West line a distance of 324.91 feet to a point of curvature of a 13.50 foot radius tangent curve to the right; thence Northeasterly along the arc of said curve, through a central angle of $89^{\circ} 14' 16''$, an arc distance of 21.10 feet to said North line of Lot 13; thence South $89^{\circ} 28' 14''$ East a distance of 18.34 feet to the POINT OF BEGINNING.

Containing an area of 3239 square feet, more or less.

Dated November 1, 1993

THE BOEING COMPANY

By: [Signature]

V.P. FACILITIES

STATE OF WASHINGTON

County of King

I hereby certify that I know or have satisfactory evidence that

is the person(s) who appeared before me.

and said person(s) acknowledged that (he, she, they) signed this instrument and acknowledged it to be (his, her, their) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 11-01-93

Notary Public in and for the State of Washington,

residing at Bellevue, WA

My appointment expires 08-29-96

STATE OF WASHINGTON

County of King

I certify that I know or have satisfactory evidence that

ANARE GAY

is the person(s) who appeared before

me, and said person(s) acknowledged that (he, she, they) signed this instrument, on each stated that HE IS

authorized to execute

the instrument and acknowledged it as the V.P. FACILITIES

of THE BOEING COMPANY to be the

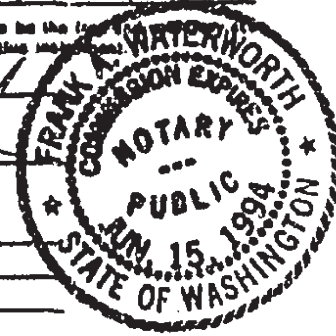
of each party for the uses and purposes mentioned in this instrument.

Dated: 11-18-93

Notary Public in and for the State of Washington,

residing at SEATTLE

My appointment expires 6-15-94



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