

# Utility Easements Act (SFS 1973:1144)

(with amendments up to and including SFS 2006:43)

## Introductory provisions

**Section 1.** Under this Act, a party wishing to use a space within a property unit for a utility or other device can obtain the right to do so (a utility easement). Questions concerning utility easements are examined by cadastral procedure.

A utility easement comprises, as determined in the cadastral procedure, a power to take within the property unit those measures which are needed for the installation and use of a utility or other device. At the request of the proprietor of the utility easement, an order can be made to the effect that a utility easement shall belong to that party's property unit or registered site leasehold.

**Section 2.** This Act applies to utilities of the following kinds:

1. a utility included in an electronic communications network for a public purpose and a public low-voltage line for signalling, remote control, data communication or some similar purpose,

2. a high voltage power line for which a concession is required or which is needed for lines mentioned in point 1,

3. a water or sewerage main which

(a) is part of a public water and sewerage system,

(b) supplies a community with water or removes wastewater or other impurity from it,

(c) benefits economic activity or a communications installation of importance for the whole country or a certain locality,

(d) entails only slight encroachment compared with the benefit and does not provide for the domestic needs of one property unit only.

4. a utility through which district heat, oil, gas or some other raw material or product is conveyed from a production point, depot or loading point and which

(a) caters to a public need,

(b) benefits economic activity or a communications installation of importance for the whole country or a certain locality,

(c) entails only slight encroachment compared with the benefit.

A device which is included in an electronic communications network for a public purpose but does not constitute a utility shall for the purposes of this Act be deemed a utility as referred to in subsection one, paragraph 1.

This Act does not apply if space for a utility can be granted by authority of the Joint Facilities Act (1973:1149).

**Section 2 a.** This Act also applies to tunnels, culverts, pipes and other such devices if the device is to be used for subsequently installing in it a utility of the kind referred to in Section 2 (1), paragraph 1 or 2.

A utility easement for a device as referred to in subsection one also entitles the proprietor of the utility easement to install and use utilities of the kind referred to in Section 2(1), paragraph 1 and 2 in such extent as decided in the cadastral procedure.

**Section 3.** A utility includes devices necessary to its purpose, such as transformers, pumping stations and other accessories.

**Section 3a.** A utility easement for such utility as referred to in Section 2 (1), paragraph 2 entitles the proprietor of the utility easement also to install and use, within the space granted for the utility, utilities as referred to in Section 2 (1), paragraph 1.

The proprietor of the utility easement may install a utility by virtue of subsection one not less than two weeks after the owner of the property unit has been notified of when the work is to begin. Notification shall be deemed to have taken place when the message has been sent by letter to the property owner at his address.

**Section 4.** A party possessing a property unit by virtue of testamentary disposition without the title being vested in any party is deemed, for the purposes of this Act, to be the owner of the property unit.

**Section 5.** Utility easement procedure is handled by a cadastral authority.

**Conditions for the grant of a utility easement etc.**

**Section 6.** A utility easement may not be granted if the purpose ought appropriately to be provided for in another way or the inconveniences of the grant from a public or private viewpoint outweigh the benefits which can be gained through it.

**Section 6 a.** The provision of Section 6 shall not be applied if provisions concerning a utility easement have been made in a property regulation plan and a utility order is made during the implementation period of the detailed development plan.

**Section 7.** A utility easement may not be granted at variance with what may be specially prescribed, for reasons of safety, concerning the installation of the utility.

**Section 8.** Within an area covered by a detailed development plan, a property regulation plan or area regulations, a utility easement may not be granted at variance with the plan or regulations. Minor deviations may be made, however, if the purpose of the plan or the regulations is not frustrated.

If nature conservancy regulations or other special provisions for the development or use of land apply, other than referred to in subsection one, a utility easement shall be granted in such a way that the purpose of the provisions is not frustrated.

If there are special reasons for doing so, at the request of the cadastral authority, may exemption be granted from provisions referred to in subsection two. Questions about exemptions are adjudicated by the County Administrative Board or a municipal authority nominated by the same.

Provisions concerning the requirement of permits for certain enterprises and measures are contained in Chap. 7, Sections 28 a – 29 b of the Environmental Code.

A decision by a municipal authority in a matter referred to in subsection three may be contested by appeal to the County Administrative Board.

A decision by the County Administrative Board in a matter referred to in subsection three may be contested by appeal to the Government.

**Section 9.** In an area not covered by a detailed development plan, a utility easement may not be granted if the grant would impede the appropriate use of the area, occasion unsuitable building development or frustrate suitable planning of the area.

**Section 10.** A utility easement may not be granted if inconvenience of any importance occurs to a public interest.

The foregoing shall not apply when the grant is predominantly beneficial from a public viewpoint.

**Section 11.** Prescriptions made in a concession order or otherwise by the party issuing a concession concerning the installation of the utility shall be complied with, Sections 6-10 notwithstanding.

### **Secondary grants in spaces granted for utilities**

**Section 11 a.** The cadastral authority may ordain that the proprietor of the utility easement is entitled to allow another party to install and use additional utilities within the space granted. Such an order may be made only if

1. the additional utility is of the kind indicated in section 2 (1), paragraph 1, and
2. there is a need for such a right, having regard to the nature of the utility.

In the assessment of an issue under subsection one, the provisions of Sections 6-11 shall apply.

If the cadastral authority has ordained as provided in subsection one, the proprietor of the utility easement may himself install and use a utility as referred to in the order, instead of allowing another party to do so.

### **Duty to surrender space**

**Section 12.** Land or other space for a utility or a device as referred to in Section 2 a may be claimed in a property unit if it does not cause exceptional detriment to the property unit.

Even if exceptional detriment occurs, the property unit is duty bound to surrender space if the utility or the intended utility is of substantial importance from a public viewpoint or if it is to be installed across the property unit by order of a concession authority. If the owner so requests, the property unit shall be purchased. If the inconvenience is limited to a certain part of the property unit, only that part shall be purchased.

The proprietor of the utility easement is entitled to compulsory purchase such property unit or part of a property unit as is referred to in subsection two if this will entail only a slight increase in the remuneration due to the property owner and the latter does not have any notable interest in retaining the property unit or the part of the property unit. In considering the question whether such right of purchase exists, the cost of a measure indicated in Chap. 4, Section 1 (2) of the Expropriation Act (1972:719) shall be included in the compensation.

The provisions of Chap. 1, Sections 3 and 4 of the Expropriation Act shall apply to grants and compulsory purchase under this Section. These provisions notwithstanding, however, a special right accruing to the State and not constituting a

public road right may be overridden. Furthermore, it may be ordered that the right to space for the utility or device shall take precedence over a special right created by expropriation or other compulsory purchase or in connection with property formation or in suchlike manner, though not if the special right constitutes a public road right.

### **Release of property fixtures**

**Section 12 a.** The cadastral authority may ordain that buildings or other facilities which, under Chap. 2, Section 1 of the Land Code, belong to a property unit and are suited for permanent use in the exercise of the utility easement, shall no longer belong to the property unit. Such an order is conditional on the measure being conducive to more appropriate use of the utility easement and on the advantages of the measure outweighing the cost and inconvenience which it entails.

Through an order as aforesaid, the title to the facility passes to the proprietor of the utility easement. If an order exists as provided in Section 1 (2), second sentence, the provision of Chap. 2, Section 1 (2) of the Land Code shall also apply to the facility.

### **Compensation for space etc.**

**Section 13.** Chap. 4 of the Expropriation Act (1972:719) shall apply concerning compensation for grant and compulsory purchase under Section 12 or a measure referred to in Section 12 a. For the purposes of Chap. 4, Section 3 of the Expropriation Act, the period related to increase of property value shall be counted from the day ten years before the utility easement procedure was applied for or the cadastral authority, pursuant to Chap. 7, Section 11 of the Real Property Formation Act (1970:988), ordered assessment pursuant to the Utility Easements Act.

If the holder of a right which reduces the value of a property unit is entitled to compensation, the value credited to the owner of the property pursuant to subsection one shall be reduced by an amount corresponding to the depreciation which the right implied. If the value which is to be credited to the owner of the property unit cannot be reduced without damage occurring to the holder of a preferential claim, the compensation to the holder of the right shall instead be reduced by the corresponding amount.

**Section 13 a.** Compensation as referred to in Section 13 shall be determined in money to be paid in a lump sum. Following special request the cadastral authority may, if appropriate, refer an interested party to present, in a special cadastral procedure, a claim for such compensation for damage and encroachment as is difficult to estimate in connection with the utility easement procedure. An application for special cadastral procedure shall be made within the time, not more than ten years, determined by the cadastral authority.

If the cadastral procedure refers to a property unit which is liable for a payment claim, the cadastral authority may make an order as aforesaid only if the creditors permit it. If the property unit is encumbered by a joint mortgage, the permission from property owners and creditors which is prescribed for partial cancellation in Chap. 22, Section 11 of the Land Code is also required. If, however, the order is substantially of no importance to any claim holder, his permission is not required.

**Section 13 b.** This Act is not applicable in matters concerning compensation for damage or encroachment arising after the cadastral procedure and not foreseeable at the time thereof.

**Section 13 c.** If it is appropriate, and subject to permission from the interested parties concerned, the cadastral authority may also examine in the cadastral procedure a request for compensation presented by an interested party and connected with the cadastral procedure but concerning a matter of law not to be examined under this Act.

In the handling of matters referred to in the foregoing, the provisions of Chap. 5, Section 12 c (2) of the Real Property Formation Act (1970:988) shall apply.

**Section 13 d.** The provisions of Chap. 4 of the Expropriation Act (1972:719) shall apply concerning compensation for damage and encroachment due to the utility being installed and used by authority of Section 3 a. For the purposes of Section 3 of the same Chapter, the period of ten years there indicated shall be counted from the day when the property owner was notified of when the work was to begin.

#### **Agreements between interested parties etc.**

**Section 14.** Derogation from the following provisions of this Act is possible if the property owners and other interested parties whose rights are affected consent thereto:

Section 6, insofar as it implies protection of a private interest,

Section 12 (1),

Section 12 a (1) second sentence, and

Section 13

If a property unit is liable for a payment claim, derogation of Section 13 by virtue of the owner's consent may be made only if also permitted by the holder of the payment claim. If the property unit is encumbered with a joint mortgage, the permission from property owners and creditors which is prescribed for partial cancellation in Chap. 22, Section 11 of the Land Code is also required. If, however, the decision is substantially of no importance to any creditor, his permission is not required. Permission from a claim holder is not necessary if the grant is substantially of no importance to him.

#### **Cadastral procedure**

**Section 15.** A question of utility easement is raised on application being made. If, however, in connection with reallocation, it has been ordained that a question of utility easement shall be examined under this Act, the question may be opened without application being made.

A question concerning a utility easement may be examined conjointly with a property formation measure in a cadastral procedure. A conjoint cadastral procedure as aforesaid may be re-divided into separate cadastral procedures.

If the utility or other device as referred to in Section 2 a is of very great extent, examination of the question of a utility easement may, if it is found suitable to do so, be divided between separate cadastral procedures, each referring to a certain length of the utility or device.

The cadastral authority may order assessment under Chap. 14, Section 1 of the Real Property Formation Act (1970:988) if necessary in connection with a cadastral procedure under this Act.

**Section 16.** Chap. 4, Sections 1-24, 27-35 and 37-40, together with Chap. 6, Sections 6 and 7 of the Real Property Formation Act (1970:988), shall apply in questions of cadastral procedure under this Act.

If, however, a cadastral procedure only concerns the conversion to a utility easement of a registered easement or registered right of user concerning the right to and retain a utility, a meeting of the interested parties shall be held only if special reasons argue for doing so. In such cadastral procedure, the matter need not be referred as provided in Section 21 to the municipal committee or committees discharging duties within the planning and building sector.

In cadastral procedure as referred to in subsection two, a registered easement concerning the right to install and retain an easement constituting a fixture to a property unit or registered site leasehold other than that where the utility is situated may be converted to a utility easement only if it is at the same time ordained that the utility easement shall pertain to the property unit or site leasehold to which the utility belongs.

If a property unit is liable for a payment claim, a registered easement or registered right of user may be converted to a utility easement only if permission exists as referred to in Section 14 (2). Permission from a claim holder is not needed, however, if the change is essentially of no importance to him.

**Section 17.** If a cadastral procedure concerns a utility for which a concession is required but has not yet been obtained, the cadastral procedure may be inaugurated if the party charged with issuing a concession permits.

#### **Section 18**

The holder of a special right to a property unit which is acquired by compulsory purchase or otherwise claimed for utility purposes is an interested party in the cadastral procedure if his right is affected.

In cases referred to in Section 33, the party whom the proprietor of the utility easement, by authority of an order pursuant to Section 11 a, has empowered to install and use a utility is also an interested party if his or her right is affected.

**Section 19.** The cadastral authority shall investigate the preconditions for the grant of a utility easement and shall attend to necessary technical works and evaluations. The interested parties should be consulted in this connection. If necessary, consultations shall be held with the authorities affected by the grant.

**Section 20.** Chap. 8, Section 7 (1) of the Real Property Formation Act (1970:988) shall apply in the event of the question of compulsory purchase arising.

**Section 21.** If a committee as referred to in Section 16 finds, during consultations as referred to in Section 19, that the permissibility of the grant as referred to in Section 19 can be questioned and if, from points of view other than those referred to in Sections 9 and 10, the grant is permissible, the cadastral authority shall refer the matter to the

municipal committee for examination. No such referral shall take place, however, if the course of the utility has been established by a concession authority.

If the committee finds that Sections 9 and 10 do not constitute an impediment to the grant, the committee shall permit the same.

A decision whereby the municipal committee has refused permission for the grant or made such permission conditional may be appealed to the County Administrative Board. The County Administrative Board's decision may be appealed to the Government.

A decision by a municipal committee or superior instance whereby permission for the grant has been refused or made conditional is binding on the cadastral authority.

**Section 22.** If there is no impediment to the grant, the cadastral authority shall make a utility order.

The utility order shows:

1. the purpose and principal nature of the utility,
2. the space granted for the utility,
3. a property unit or part thereof compulsorily purchased,
4. a building or other facility forming the subject of an order as referred to in Section 12 a,
5. provisions referred to in Section 1 (2),
6. the time within which the utility shall be completed,
7. any other prescription needing to be made with regard to the utility,
8. an order pursuant to Section 11 a, stating the principal nature of the utilities needing to be installed and the space which may be utilised for these utilities, together with any other prescription needing to be made in connection with the order.

For the purposes of Section 2 a

1. the provisions of subsection 2, points 1 and 7, concerning a utility shall also apply to the device for which the utility easement is granted, and
2. the provisions of subsection 2, points 2 and 6, concerning a utility shall instead apply to the device.

If a question concerning a utility easement is examined conjointly with a property formation measure in a cadastral procedure, the utility order may be included in the property formation order.

**Section 23.** If appropriate, a utility order may be made in spite of technical works and evaluations not having been carried out. Subject to the same condition, a utility order may be made with special reference to a certain length of the utility or devise.

**Section 24.** Possession of space claimed or land compulsory purchased is taken in possession at the point in time determined by the cadastral authority. Before possession is taken, the utility order shall have acquired force of law and compensation as referred to in Section 13 shall have been paid.

**Section 25.** Regardless of compensation as referred to in Section 13 not having been paid, possession may be taken if the interested parties concerned permit it. Possession may also be taken without permission after the cadastral authority has determined an advance on the compensation finally determined and the advance has been paid. If it is

obvious that the advance would be only an insignificant amount, the cadastral authority can prescribe that possession may be taken without an advance being paid.

An order concerning an advance shall indicate the time within which an advance constituting a condition for the taking of possession shall have been paid. If payment has not been made within the allotted time, possession may not be taken before compensation as referred to in Section 13 has been paid.

Even after possession has been taken, the cadastral authority, at the request of an interested party, may determine that an advance is to be paid.

If an advance payment has been determined as provided in this Section, the final compensation may not be set at an amount less than the advance. This applies, however, only if possession has been taken or the advance has in any case been paid.

**Section 25 a.** The provisions of Chap. 5, Section 30 a of the Real Property Formation Act (1970:988) concerning advance possession shall apply, *mutatis mutandis*, in connection with cadastral procedure under this Act. Provisions concerning property formation orders shall then be applied to utility orders.

**Section 26.** A cadastral procedure which has been commenced by order in connection with reallocation shall be cancelled if the cadastral reallocation procedure is cancelled. The cadastral procedure shall, however, be continued if an interested party who has presented a claim in the cadastral procedure and could have applied for the latter so requests. If the interested parties are notified at a meeting of the cancellation of the cadastral reallocation procedure, the request shall be made at the meeting. Otherwise the request shall be presented within a time prescribed by the cadastral authority.

**Section 27.** The proprietor of the utility easement shall answer for the procedure costs except insofar as application of Chap. 18, Section 6 or 8 of the Code of Judicial Procedure, *mutatis mutandis*, indicates otherwise.

If the question concerning a utility easement has been admitted without application being made or, in a case referred to in Section 33, on application being made by an interested party other than the proprietor of the utility easement, the procedure costs shall be apportioned between the interested parties according to what is equitable. If, however, the cadastral procedure refers solely to the conversion of a registered easement or registered right of user concerning the right to install and retain a utility to a utility easement, the proprietor of the utility easement shall answer for the procedure costs as provided in the foregoing.

If a question concerning a utility easement is handled conjointly with a property formation measure in a cadastral procedure, costs common to different measures shall be apportioned between them according to what is equitable.

Cadastral procedure costs include a set charge, remuneration of an expert, expenditure on practical assistance not included in the assessed charge and compensation for damage referred to in Chap. 4, Section 38 (3) of the Real Property Formation Act (1970:988).

### **Judicial proceedings**

**Section 28.** Chap. 15, Sections 1-8, 10 and 11 of the Real Property Formation Act (1970:988) shall apply, *mutatis mutandis*, in questions concerning prosecution of



appeal against an order or measure by the cadastral authority pursuant to this Act. The provisions concerning property formation orders shall then apply to utility orders.

**Section 29.** The provisions of Chaps. 16-18 of the Real Property Formation Act (1970:988) concerning judicial proceedings in property formation cases shall apply to judicial proceedings prosecuted as referred to in Section 28. In the matter of legal costs in an utility easement case, the provisions applying to cases of the kind referred to in Chap. 16, Section 14 (2) of the Real Property Formation Act shall then apply. If, however, the action concerns a cadastral procedure referred to in Section 33, the provisions concerning legal costs in property formation cases generally shall apply.

**Section 29 a.** The provisions of Chaps. 5 and 6 of the Expropriation Act (1972:719) shall apply concerning compensation claims as provided in Section 13 d.

In the matter of legal costs, however, the provisions of Chap. 16, Section 4 (2)-(3), Chap. 17, Section 3 (2) and Chap. 18, Section 2 (2) of the Real Property Formation Act (1970:988) shall apply concerning legal costs in cases for compulsory purchase payment.

#### **Enforcement etc.**

**Section 30.** Compensation as referred to in Section 13 or 33 shall be paid within three months of the compensation order acquiring force of law. Insofar as compensation is paid after the expiry of this time limit, interest as provided in Section 6 of the Interest Act (1975:635) shall be paid on the compensation from the expiry of the time limit. If possession was taken before the expiry of the time limit, interest as provided in Section 5 of the Interest Act shall also be paid from the day on which possession was taken and until payment is made or interest becomes payable under point 2 of that Section.

Chap. 5, Section 16 of the Real Property Formation Act (1970:988) shall apply, *mutatis mutandis*, in questions concerning compensation referred to in Section 13 and advance payments referred to in Section 25 or 25 a.

**Section 30 a.** An order by the cadastral authority, pursuant to the provisions of this Act, to order a party to pay compensation to an interested party may be enforced as provided in the Enforcement Code.

On a party refusing without cause to surrender land or a building in due time, the successor is entitled to obtain enforcement assistance from the Swedish Enforcement Authority in order to gain possession of the property.

**Section 31.** If, within a year of the compensation order acquiring force of law, compensation as referred to in Section 13 has not been paid as determined in the order and no party awarded such compensation in the order has requested enforcement of the order in this respect, the utility order shall lapse. The utility order shall also lapse if the utility or device does not materialise within the time set in the order. This shall not apply, however, if the utility which has not materialised is of the kind referred to in Section 11 a.

If the utility order provides for a property unit or part thereof to be compulsory purchased, the order shall in this respect apply in derogation of the provisions of

subsection one.

If there are special reasons for so doing, the cadastral authority may order prolongation of the time indicated in subsection one.

Compensation which has been paid may not be recovered on account of the utility order having lapsed as provided in this Section.

The provisions of Section 1, first sentence do not apply to compensation established in a special cadastral procedure as referred to in Section 13 a.

**Section 32.** After a cadastral procedure under this Act has been concluded and has acquired force of law, an entry concerning it shall be made at the earliest possible opportunity in the general section of the Real Property Register. If the cadastral procedure has been appealed, the entry shall be made in it at the earliest possible opportunity after the court's decision has acquired force of law.

An entry concerning a utility order which it has been possible to appeal by separate process shall be made in the general section of the register even if the cadastral procedure has not been concluded. The entry may not be made, however, before the order has acquired force of law.

When an order or a measure at the conclusion of a cadastral procedure has been appealed or when a utility order has been appealed by separate process, an entry occasioned by the cadastral procedure or the order may nevertheless be made in the general section of the register with regard to a part which is manifestly not affected by the appeal. The same applies when a judicial decision in a case under this Act has been appealed.

If a cadastral order has ceased to apply, an entry as referred to in subsections one-three shall be removed.

#### **Effects of changed conditions etc.**

**Section 33.** If, following the final adjudication of a question concerning a utility easement, conditions change in a manner having a substantial bearing on the question, the question can be examined in a new cadastral procedure. Even if no such change has occurred, a new cadastral procedure may be held if a clear need of review has emerged. A utility easement can then be amended, cancelled and, if this is done by reason of the cancellation, granted. If the cadastral procedure refers to a utility for which a concession has been granted, Section 17 shall apply.

The proprietor of the utility easement and the party empowered by the proprietor of the utility easement to install and use a utility as referred to in Section 11 a is entitled to compensation for damage caused to him or her by a measure as per subsection one. The cost thus involved is apportioned between other interested parties according to what is found equitable, having regard above all to the benefit derived from the measure by each interested party. If it has been ordered that the utility easement shall belong to a property unit or a registered site leasehold, Chap. 5, Section 16 of the Real Property Formation Act (1970:988) shall apply, *mutatis mutandis*, in the matter of compensation, insofar as the measure entails depreciation of the property unit or the site leasehold.

**Section 34.** If it has not been ordered that a utility easement shall belong to a certain property unit or to a registered site leasehold, an order of this kind can, at the request

of the proprietor of the utility easement, be made in a new cadastral procedure. An order can be cancelled or amended in a new cadastral procedure if all creditors having a claim combined with a mortgage lien on the property unit or the site leasehold permit.

The interested parties need not be consulted in cadastral procedure as aforesaid.

**Section 34 a.** A question as to whether, under Section 12 a, buildings or other facilities shall no longer belong to a property unit may be assessed in a new cadastral procedure, even if the conditions in Section 33 (1) are not satisfied.

**Section 35.** The transfer of a utility or other device for which a utility easement has been granted is valid only if the transfer also includes the utility easement. The aforesaid does not apply, however, if the utility or device has been transferred in order to be removed.

If a utility easement is transferred without the utility or device to which it refers being transferred at the same time, the transfer is valid only if the utility has not yet been built or if it has been removed.

The provisions of subsections one and two do not apply to a utility referred to in Section 11 a and possessed by a party other than the proprietor of the utility easement.