

## KNOW YOUR (PROPERTY) RIGHTS

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Parking requires facility owners, operators, and users to occupy physical space. Therefore, real estate is an essential component of parking. A basic understanding of legal property rights can help guide parking owners and operators in making decisions about the real estate required or legal rights necessary to efficiently maintain parking operations and develop new facilities.

When considering real estate options for parking facilities, it is important to understand the form of ownership and the rights that come with it to best fit the needs of a particular situation. Depending on the ownership structure, tax implications, duration, and extent of use, the rights in real estate for parking facilities can be tailored to suit the project purpose.



### Acquisition

The most common approach to developing a new parking facility is through the outright acquisition of real estate. When a parking owner acquires a new property, he or she receives fee simple ownership of the real estate. The “fee simple” title is an interest in land—the broadest property interest allowed by law. Ownership of real estate is often described in legal terms as control over a collection of specific property rights, including the right to possess and occupy land, the right to mortgage land, and the right to lease or sell the land. Fee simple ownership is often described as absolute, only subject to the power of the government to create restrictions through police powers such as zoning, taxation, or eminent domain for public purpose. Fee simple ownership allows a parking operator to plan and develop long-term parking facilities such as surface lots or structured parking.

In the context of a public-private partnership, the same incidents of ownership of fee simple title can be accomplished through a ground lease if the conveyance of title from the public entity to the private entity will trigger unwanted consequences, such as taxation. Often, the ground lease will have a long duration, such as 99 years, to allow for the development of long-term parking facilities and the right to maintain them for the duration of the ground lease. If the proposed parking project involves the use of an existing improvement, a lease may be a good option. While title does not transfer from a lessor to a lessee, the parties to a lease can negotiate all terms of use of the real estate and improvements.



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### Access

Access rights are defined as the legal right of ingress to and egress from one’s property to a public road. In most jurisdictions, there is a right to have access to a public road to prevent a property from being landlocked; therefore right of access may be expressly defined in a recorded document or implied.

An easement is a legal document that creates a non-possessory interest in land held by one person in property of another, where the first person is accorded partial use of the property for a specific purpose. An easement restricts but does not abrogate the fee owner’s rights to the use and enjoyment of the property. Parking and access easements are referred to as surface easements.

In addition to access easements, a general right-of-way is described as the right to pass across the land of another. The rights created by an easement or right-of-way run with the land in perpetuity and will only be terminated through a voluntary act or abandonment.

A license is the legal term for the grant of permission to enter, occupy, or use real estate subject to specific terms. A license is the most frequently granted real estate right in a parking operation. A license can take the form of a monthly parking permit or an automated ticket generated by a parking gate control. The license provides the most flexibility in the duration and terms for using parking facilities. **P**