

Real Property: Easements

STEP ONE: What type of interest in land is claimed?

EASEMENTS: USE RIGHTS HELD BY ANOTHER

EXPRESS EASEMENTS

IMPLIED EASEMENTS

EXPRESS GRANT

BY EXPRESS RESERVATION

IN GROSS

APPURTENANT TO OTHER LAND

QUASI IMPLIED BY PRIOR USE

IMPLIED BY NECESSITY

PRESCRIPTIVE

EASEMENT BY ESTOPPEL

STEP TWO: What will the effect be? Three questions

A. Was the interest validly created?

SOF applies if >1 year
Easements generally need signed writing & formalities of a deed to be created or destroyed (e.g. release).

Owner of a present possess. interest conveys title & reserves a use right.

Easement holder has special use right in the servient tenement independent of ownership of other land.

Must be two tracts of land & easm. holder benefits in the use of her own land (domin. tenement)

Court creates when a tract is divided, quasi easem. if parties intended prior use to continue & easm. reas. neces. to enjoy dominant part.

When a tract is divided creating a land locked parcel, easem. by necessity over the other.

Created by court, following same rules as adverse possess. except NOT exclusive use (because not possessory) & adverse w/ claim of right, not hostile.

If grantor attempts to create an oral easem., SOF means failure. Result is a license. BUT if reas. & det. relied upon, irrevocable = easement.

B. What are the characteristics of the interest?

Presumed to be perpetual duration. Holder has use right but no possession. Owner of servient tenmt. has possession limited by use of other.

Same char. as by grant. Only difference is the easement holder

Individually held interest. May be personal (Bob can swim in the pond) or commercial (AT&T can run phone lines.)

Linked to ownership of dominant tenement. Will run w/ dominant land automatically.

Once court creates, same char. as other easements. If in favor of grantee, said to be by implied grant; in favor of grantor: by implied reservn.

Extent of necessity determines scope of easm. Servient parcel owner has right to locate the easem. if reasonable.

Easem. holder held to have adversely "possessed" the use right. Adverse use determines the scope.

Irrevocable license or easement by estoppel? Same result: works just like any other easement.

C. What are the limitations on the interest?

ALL easements may be terminated by: (1) unity of ownership (no revival); (2) release (must be by conveyance); (3) abandonment (physical act, not mere words or nonuse); (4) estoppel; (5) prescription; (6) involuntary destruction or condemnation of servient estate.

Terms may provide that easement terminates at certain time.

C/L & major: reservation can only be for grantor. Trend toward reserv. for 3rd parties.

if ambiguous court will find easement appurtenant.

Generally not transferable.

Only if prior use EXCEPT: Variation: w/ NO prior use: subdivision streets or to access a profit.

Terminates when necessity terminates.

Use of easem. by necess. NOT adverse use to create prescp. easem. BUT when necess. ends, easem. ends. Use after that IS adverse.

STEP THREE: Conveyancing issues

Issue of creation by grant or reservation does not affect alienability. Each of these methods can be used to create an easement in gross or an easement appurtenant, which is the distinction that matters in terms of later conveyance. →

Usually only alienable if commercial. But can be conveyed to serv. estate owner to end by release. (Release must always be by conveyance.)

Benefit passes w/o notice; burden only w/ notice. Not transfbl. w/o transfer of domint. tenmt. EXCEPT to serv. estate owner to end by release.

Appurtenant only, so follow those rules.

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When court creates the easement, it will designate it to be in gross or appurtenant & those rules of alienability will be followed.

STEP FOUR: Remedies

If easement holder exceeds scope, easement is said to be "surcharged": servient owner may get injunction or damages, but easement stays. Minor and foreseeable changes in use do not exceed the scope (e.g. easement for horse & buggy widened slightly to accommodate motor cars). If the scope of express easement is ambiguous, resolved in grantee's favor. Subdivision of dominant parcel exceeds scope if resulting use is unreasonable.