

Real Property: Other Nonpossessory Interests

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

NONPOSSESSORY INTERESTS IN LAND

USE RIGHTS HELD BY OTHERS

COVENANTS: PROMISES REGARDING OWNER'S USE

LICENSE

PROFIT A PRENDRE

NATURAL LAND RIGHTS

REAL COVENANTS RUNNING w/ LAND

THE BURDEN

THE BENEFIT

EQUITABLE SERVITUDE

IMPLIED NEGATIVE RECIPROCAL SERVITUDE

STEP TWO: What will the effect be? Three questions

A. Was the interest validly created?

Temporary permission of the owner to enter land.
May be oral or written.
Includes tickets, etc.

Created and destroyed by the same rules as easements.

Water
Riparian rights (land borders water), right of prior approp., common enemy (floods).
Lateral/Subj.
By fact of nat. state of support

To run w/ land @ law:
1. Written promise (e.g. deed; 1 sig. OK)
2. Intent to bind successors in interest
3. Burden touches & concerns land
4. Vertical privity *same* int. in land
5. Horiz. privity
6. Notice to purch. of burdened prop.

3. Benefit touches & concerns the land
4. Vertical privity: *any* succeeding interest (No horiz. nec: e.g. neighbors' covs.) (Ben: notice unnec.)

Usually when a cov. enforced as an injunction.
May be π 's choice or only option if missing a cov. element.
Still need writing, notice, touch/concern

Common plan or scheme for development.
Writing reqmnt. waived: implied by common plan
Notice by inquiry.

B. What are the characteristics of the interest?

Temporary.
Owner's terms.
Prevents an adverse posses. claim if in time: no hostility.
Irrevoc. if coupled w/ int. or det. reliance: ease. by estop.

Permits holder to enter land and remove the soil or produce of the soil.
Includes an implied easemt. for access.

Watercourses: Natural uses over artificial.
Ground water: may be "all you can take," even export.
Support rights in natural state

Owner's promise regarding the land
May be affirmative or restrictive
Covs not to compete: courts vary on whether benefit runs w/ land.

Burdened estate holder enjoined from violating cov. (More likely to be enforced if negative cov.)

When some buyers covenant, others bound too
Also enforceable against actual developer or successor in int.

C. What are the limitations on the interest?

Revocable at will unless above (but breach of K poss. if tickets)
Actually not an interest, but a privilege

In gross: may be transferred.
Appurtenant: follows land int.
May have to share w/ owner unless exclusive
Limit by scope.
Term. by misuse

Support rights not present if bldgs unreas. built after orig. supp. removed.

Racially restrictive covs not enforceable.
Only money damages. If π wants injunction, enforced as equitable servitude
As with all nonpossesory interests in land, may be terminated in three ways:
1. Release in writing by benefited party
2. Merger: 1 person owns both estates
3. Condemnation of burdened property

Enforceable only as an injunction in equity. No \$ damages.
Equitable defenses apply

Injunction only & equitable defenses apply.

STEP THREE: Conveyancing issues

Usually not transferable (except theater tickets)

In gross: may be transferred.
Appurtenant: transferred w/ conveyance of dominant est.
May be extinguished by misuse (exceeding scope, etc.)

Natural rights are passed on automatically with transfer of the land

Purchaser of land must be on notice for burden to run

Purchaser of benefited land may enforce even if not on notice of benefit

Actual or constructive notice required to bind purch. of burdened estate.

Successors in interest may still be bound even w/o actual notice: inquiry notice from common plan or scheme

STEP FOUR: Remedies

In the case of tickets, license may be revoked but the ticket holder sues for breach of K if \$ not refunded

Misuse held to *surcharge* the servient estate: result is extinguish.

Injunc. or dmg.
NOTE: Not "negative easements."
Two problems:
1. *agreements* to not draw water, dig, etc. are restrictive covs (not "neg. easemts") & *agreements* for use by non-owner: easmts.
2. Nat. rights w/ no agreemt. stand alone.

Money damages only.

Injunctive relief only.

Injunctive relief only.