

Property Easements

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The vast majority of the public has dealt with an easement in one form or another. Easements and their use vary depending upon the location and use of the individual easement. Typically, we associate easements with driveways and roads that extend beyond a landowner's property, allowing that person access to a public roadway by way of another person's property. Many easements obviously do take the form of a private roadway, but can also apply to underground pipes, drainage systems, and farmland access roads.

An easement, by simple definition, is the right to use property. It is not an ownership interest, though it may necessarily be treated as such. The law has always promoted the use of land, even allowing an easement to arise in cases where an easement was never agreed upon, nor ever existed, when a tract is landlocked in a manner that deprives the owner of the tract from the use and enjoyment of his land.

An easement can arise from an express grant, implied grant, a prescriptive use, or simply because the easement is "necessary." An express grant of easement is often included in a deed or another written document. Typically the easement is described in terms of its location, dimensions, and the purposes for which it can be used. Such an easement may be granted to allow a landowner access to a tract of hunting land, but may be limited to foot travel or ATV use only. These easements may be newly created upon the sale of property, or may merely formalize an easement that has existed for 20 years. Typically, these are the least disputed easements.

An implied easement may arise when an owner sells a portion of property,

leaving the new owner landlocked. Though this could be avoided by recording an easement with the county recorder's office at the time of the sale, the implied easement is designed to allow the landlocked owner to gain access to his property by reasonable means because it was implied that he would have the ability to do so.

Similarly, an easement may arise by necessity. Once again the scenario in which an "easement by necessity" typically arises is when an entire tract, or a portion of that tract, has no access route to a public road. I was involved in a case in which a farmer owned a tract of bottomland that adjoined a small river on one side. The tract was bordered on all other sides by private property owned by other persons. As there was no public road adjoining this property, and no bridge allowing him access from other land owned by the farmer across the river, he was entitled to file a suit to ask the court to grant him an easement through one of the adjoining landowners.

An easement can also arise by "prescription" - easement law's equivalent to adverse possession of land. Perhaps the most difficult easement to establish, the prescription easement arises where a landowner had been using an access route through an adjoining landowner without his permission. The person seeking the easement must establish that he has used the road in excess of ten (10) years. The use must be continuous during that period, visible, and hostile to the actual owner's interest in that property.

Unlike adverse possession, however, the prescriptive easement only provides for the use of the land, and does not transfer any ownership interest in the land. Consistent with the law's position on adverse possession of property, the courts, through easement law, have indicated their desire to promote the use and enjoyment of the land.