

WHAT IS AN EASEMENT?

An easement is a right of use over the property of another for a specific purpose. Under California law, an easement may be established in the following ways: Express Grant; Prescription; Implied Grant or Reservation; and Necessity.

Easements By Express Grant

An express easement is created by deed, contract, or other written instrument. Under California law, the use of the easement is determined by the contents of the document which created it.

Easements By Prescription

Under California law, an easement by prescription may be established upon a showing by the claimant that he has used the easement openly, notoriously, and continuously for a period of five years. The claimant's use of the easement must be hostile or adverse to the owner. If the owner has given the claimant permission to use the land, an easement by prescription is not needed.

Easements By Implied Grant or Reservation

An easement by implied Grant or Reservation arises based on the inferred intent of the parties to the transaction and the circumstances surrounding the transaction. Under California law, certain conditions must exist at the time of conveyance for the easement to be given. These conditions are; a) a separation of title; b) before separation takes place, the use must have been so long continued and so obvious to show that it was intended to be permanent; and c) the easement must be reasonably necessary to beneficial enjoyment of the land granted.

The requirement that the use giving rise to the implied easement be obvious or apparent does not mean it must be visible on inspection of the surface of the land.

In California, an easement by implied reservation, as well as grant, are recognized. If an owner conveys the part of his land burdened by a use for the benefit of land retained by him, an easement by implied reservation arises in his favor if all the proper conditions to create an implied easement are met

Easements By Necessity

An easement by necessity arises where the easement is essential to the grantee's beneficial use and enjoyment of the property conveyed to him by the grantor. An easement by necessity is an appurtenant easement. This means that it runs with the land and will continue to benefit the dominant tenement even if ownership of that property is transferred.

Easement and Property Boundary Disputes

Among the most common easement issues are misuse by the easement holder and interference with the easement holder's use of the easement by the property owner. Easement disputes may also arise where improvements such as fences, walls, and driveways are erected which encroach on adjoining property.



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