**Easement Basics**

An easement is a property right that gives its holder a nonpossessory interest in another person's land. Many people lack a clear understanding of easements, and the numerous legal problems that can arise in their drafting, interpretation and implementation.

**Easements at a Glance**

An easement is a nonpossessory property interest that allows the holder of the easement to use property that he or she does not own or possess. An easement does not allow the easement holder to occupy the land, or to exclude others from the land, unless they interfere with the easement holder's use. In contrast, the possessor of the land may continue to use the easement and may exclude everyone except the easement holder from the land.

Land affected or "burdened" by an easement is called a "servient estate," while the land or person benefited by the easement is known as the "dominant estate." If the easement benefits a particular piece of land, it is said to be "appurtenant" to the land. If the easement only benefits an individual personally, not as an owner of a particular piece of land, the easement is termed "in gross." Most easements are affirmative, which means that they authorize use of another's land. Less common are negative easements, which usually involve preserving a person's access to light or view by limiting what can be done on neighboring or nearby property.

**Creation of an Easement**

Easements are usually created by conveyance in a deed, or some other written document such as a will or contract. Creation of an easement requires the same formalities as the transfer or creation of other interests in land -- typically: a written instrument, a signature, and proper delivery of the document. In limited circumstances, a court will create an easement by implying the existence of the easement based on the circumstances.

Two common easements created by implication are easements of necessity and easements implied from quasi-easements. Easements of necessity are typically implied to provide access to a landlocked piece of property. Easements implied from quasi-easements are based on a landowner's prior utilization of part of his or her property for the benefit of another portion of his land. Other methods of establishing easements include prescriptive (http://realestate.findlaw.com/land-use-laws/prescriptive-easements.html) use (the routine, adverse use of another's land), estoppel, custom, public trust, and condemnation.

**Rights and Remedies Under an Easement**

As a general rule, an easement holder has a right to do "whatever is reasonably convenient or necessary in order to enjoy fully the purposes for which the easement was granted," as long as he or she does not place an unreasonable burden on the servient land. Conversely, the owner of the servient land may make any use of that land that does not unduly interfere with the easement holder's use of the easement. What constitutes an undue burden depends upon the facts of each individual situation. The concept of reasonableness includes a consideration of changes in the surrounding area, as well as technological developments.

If a court determines that a servient estate is unduly burdened by an unreasonable use of the easement, the servient estate holder has several potential legal remedies. These include court orders restricting the dominant owner to an appropriate enjoyment of the easement, monetary damages when the easement holder exceeds the scope of his or her rights and injures the servient estate, and in some cases extinguishment of the easement. Likewise, remedies exist for interference by the servient owner. Interference with an easement is a form of **trespass** (http://realestate.findlaw.com/land-use-laws/trespassing.html), and courts frequently order the removal of an obstruction to an easement. If interference with an easement causes diminution in the value of the dominant estate, courts may also award compensatory damages to the easement holder.

**Transferability**

In general, an easement appurtenant is transferred with the dominant property even if this is not mentioned in the transferring document. But, the document transferring the dominant estate may expressly provide that the easement shall not pass with the land.

Because easements in gross are treated as a right of personal enjoyment for the original holder, they are generally not transferable. However, several states have enacted statutes designed to facilitate the transfer of easements in gross. The transfer of easements in gross for commercial uses such as telephones, pipelines, transmission lines, and railroads is often permitted.

**Other Legal Issues to Consider**

Courts generally assume easements are created to last forever, unless otherwise indicated in the document creating the easement. Despite this, an individual granting an easement should avoid any potential legal or interpretive problem by expressly providing that the easement is permanent. Although permanent easements are the norm, they **can be terminated** (realestate.findlaw.com/land-use-laws/use-and-termination-of-easements.html) in a number of ways. Easements of limited duration are commonly used to provide temporary access to a dominant estate pending the completion of construction work.

An easement may also be terminated when an individual owning the dominant estate purchases the servient estate, or when the holder of an easement releases his or her right in the easement to the owner of the servient estate. This release must be in writing. Abandonment of an easement can also extinguish the interest, but as a general rule mere nonuse of an easement does not constitute abandonment.

Under some circumstances, misuse or the sale of a servient estate may terminate an easement. Finally, condemnation of an easement by a public authority, or condemnation of the servient estate for a purpose that conflicts with the easement, terminates an existing easement.

**Get a Free Legal Review of Your Easement Concerns**

The prevalence of easements and their nonpossessory nature creates a unique set of considerations in drafting, interpretation, and implementation. It is essential to have a basic understanding of the manner in which they are created, their scope, transferability, and methods of termination. Get started today with a free legal advise by a local attorney, who can discuss your easement concerns and provide you with valuable guidance.