

Real Estate Viewpoints



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Easements: How They Affect Your Property Rights

An easement is a right given by an owner of land to another person, permitting such person to enter upon the land for a particular purpose. Such right may be extended to one person only or to a person and his assigns and heirs.

The most common easements are the rights of service people to enter upon your property to service telephone and electrical facilities, and the right of utility companies to run lines across and erect poles on your property.

The seller should have it clearly outlined in his listing exactly what easements exist on the property. The buyer should in his written offer to purchase the property have it clearly outlined under exactly what conditions he is willing to buy the property. Is he willing to buy the property subject to the easements the seller has granted?

When the seller gives the buyer a general warranty deed to the property he guarantees him that there are no liens on or encumbrances against the property other than those stated in the deed. Known easements, those not concealed but visible to the buyer, need not be mentioned in the warranty deed as easements against the property. For example, the telephone line running across the property, although it is an easement on the property need not be listed in the general warranty deed.

Even though the sales contract makes no mention of known easements, if these easements are visible to the buyer he will not be able to back out of the sales contract on the basis that these easements were not mentioned in the contract.

No matter how firm and binding a sales contract is, when it does not mention known easements, or how valid a warranty deed is that does not mention known easements, both parties to a sale of real estate should be fully aware of what easements exist on the property and should be in complete agreement as to how these easements shall be handled.

Unfortunately, this is not always the case, and as a result, hard feelings often arise from undisclosed and unmentioned easements. For example, you purchase a property and move onto it. Every morning and evening a neighbor walks across your lawn to reach his garage. It is a short cut for him but he can get to his garage without crossing your lawn.

You ask him to stop using your lawn for a short cut. A dispute arises when he insists that he was given the right to walk across your lawn by the person who sold you the property. You knew nothing about this right (easement) being given to your neighbor by the seller. This misunderstanding possibly could have been avoided if the seller had mentioned to you this right he had extended to the neighbor.

The parties to the different types of easements are the grantor, who gives the easement and the grantee, who receives the benefits of the easement.

With an express grant, the grantor gives the grantee, his heirs, and his assigns the right to go upon his property for a particular purpose. The right is given in writing, is signed by the grantor, is delivered to the grantee, and is recorded.

For example, A gives B in writing the right to cross his land to get to the public highway.

With an express reservation, the grantor reserves for himself the right to make a particular use of another's property. The grantor transfers the property to another but reserves for himself the right to make a particular use of the property.

Easement by prescription is a right awarded a person because he or they have continuously and openly made a particular use of another's property for twenty years or more.

The right to use the property is not given in writing and the use made of the property must be contrary to the owner's interests. If these requirements are fulfilled, the person can earn the right to continue making the same use of the property.

The simplest way to remove an easement is for the grantee to discontinue making use of the easement. For example, if B creates another access route to the public highway and quits crossing A's land, the easement is automatically removed.

Another way to remove an easement is through the use of a quit claim deed. The grantee, who had the benefit of the easement, relinquishes to the grantor all his rights to enter upon the grantor's property.

The ethical seller is the one who tells the buyer all he knows about easements on the property. The wise buyer is the one who keeps his eyes open and asks questions about easements.

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