

A.:I would not recommend removing any of your neighbors' improvements (even if they are located on the roadway easement), until the situation is thoroughly evaluated by a competent real estate attorney and/or the matter has been resolved either through mediation or by legal action. Easement issues are not as "cut and dry" as you may think, you may be sued for your conduct, and each case is determined by its unique facts. For example, as set forth below, the allowed use of an express easement may be enlarged by prescription.

An easement may be created not only by an express agreement between parties. In fact, an easement may be created in eleven different ways: (1) an express grant, (2) an express reservation, (3) an implied grant, (4) an implied reservation, (5) necessity, (6) prescription, (7) a recorded covenant, (8) dedication, (9) condemnation, (10) estoppel, and (11) in some cases, by balancing of hardships. There are no other recognized methods for creating an easement on the land of another. I assume that the easement in question was created by an express grant.

The extent that an expressly created easement can be used by its owner is determined by the terms of the instrument of its creation. (Civil Code section 806; *Colegrove Water Co. v. City of Hollywood* (1907) 151 Cal. 425, 429, 90 P. 1053). Generally, a grantee of an easement receives only those rights of use expressly conveyed and any additional rights that are necessary and reasonable for enjoyment of the easement, incidental to the grant, and consistent with its purpose. (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 866, 274 Cal.Rptr. 678; *Atchison, T & S. F. Ry. Co. v. Abar* (1969) 275 Cal.App.2d 456, 464, 79 Cal.Rptr. 807).

The most common type of easement is a roadway for ingress and egress to another parcel of property. The conveyance of a road easement only grants a right of ingress and egress and a right of unobstructed passage across the easement. It does not include the right to use the easement for any other purpose. For example, the conveyance of a "right of way" does not include the right to dig trenches and lay pipelines for conducting water (*San Rafeal Ranch Co. v. Ralph Rogers Co.* (1908) 154 Cal. 76, 77, 96 P. 1092), of the right to travel over other parts of the servient tenement (*Vestal v. Young* (1905) 147 Cal. 715, 718, 82 P. 381), except as may be reasonably necessary in order to maintain and repair the easement.

As a general rule, the owner of the easement can improve the easement or construct improvements on the easement, such as grading, paving, installing guardrails, and so on, which are reasonably required to make the use of the easement safe and convenient. However, in doing so he or she may not increase the burden on, or unreasonably interfere with, the use of the servient tenement by the owner of the underlying fee. (*Noel v. Capobianco* (1933) 218 Cal. 481, 483, 23 P.2d 511; *Wright v. Austin* (1904) 143 Cal. 236, 239, 76 P. 1023).

When a party already has an easement, however, the use of the easement may thereafter be enlarged by prescription if the excessive use is of a nature sufficient to put the owner of the servient tenement on notice of the greater rights claimed by the user. In addition, the location of an easement created by an express grant can be altered, or its size or use enlarged, by prescription. (*Scott v. Henry* (1925) 196 Cal. 666, 669, 670, 239 P. 314; *Kerr Land & Timber Co. v. Emmerson* (1965) 233 Cal.App.2d 200, 228, 43 Cal.Rptr. 333). In order to establish an easement by prescription it must be shown that the easement was (1) used continuously for a period of five years, and (2) possessed in a manner that was open, notorious, and clearly visible to the owner of the burdened land, and hostile and adverse to the owner. (Civil Code section 1007; Code of Civil Procedure section 321; *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570, 199 Cal.Rptr. 773). Whether the easement has been used

sufficiently to create an easement by prescription is a question of fact, and the claimant is entitled to a jury trial on the factual issues. These facts can first be evaluated by a competent real estate attorney, prior to taking any action.

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