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## **An exclusive easement, how can that be?**

By Ronald L. Richman

In a recent case, the California Court of Appeal confirmed that in rare circumstances, a party can establish an *exclusive easement* over another's property, i.e., the right to use a portion of another's property to the exclusion of the actual owner.

### **EASEMENT VS. ADVERSE POSSESSION**

In defining competing property rights, there is a distinction between adverse possession and a prescriptive easement. *Adverse possession* is a means to actually acquire an ownership interest in the property of another without any form of payment to the actual owner. A person who has established adverse possession over another's property does so by essentially taking away the existing property rights of the actual owner. An *easement*, on the other hand, is merely the right to use the land of another, as opposed to acquiring an ownership interest in the land. An easement can be acquired either through a party's conduct on the property<sup>[1]</sup> or by grant deed.

One of the fundamental differences between adverse possession and an easement is that in the case of an easement, a right to use the land of another, the person who establishes an easement does NOT have an exclusive right to use the property subject to the easement. Instead, he or she must "share" the right to use the property so as not to unduly interfere with the actual property owner's use of the property.

### **ACQUIRING AN EXCLUSIVE EASEMENT**

An *exclusive* easement can be acquired by a party's conduct on the property or by the express language in a grant deed conveying an easement. For example, a water district that built and maintained a reservoir on a portion of a neighboring property was entitled to an exclusive easement on the portion of the property containing the reservoir because the exclusive use of the easement, the reservoir, was necessary to prevent any contamination of the water supply.

An exclusive easement may also be conveyed to another party by grant deed. A grant deed may contain express language that can only be interpreted as conveying an exclusive easement. For example, in a recent California case, the owner of a residential property conveyed to his neighbor, in a grant deed, "an easement for parking and garage purposes." At the time the easement was conveyed, no parking garage existed on the easement. The California Court of Appeal held that the plain language of the easement conveying "an easement for parking and garage purposes" clearly entitled the holder of the easement to build a garage on the easement. Further, because the garage sat on only a very small portion of the easement and it would simply be impractical to share the garage (a shared two-car garage would most likely lead to disputes regarding the allocation of parking spaces, security and maintenance costs), the Court held that the holder of the easement was entitled to the *exclusive* use of the parking garage. However, the owner of the easement did not have exclusive use over the remaining portion of the easement and, as is the case with most easements, could use the remaining portion of the easement in such a manner as to not interfere with the actual owner's use and enjoyment of his property.

Absent express language in a grant deed or some exigent circumstance where it impossible or impractical to share an easement, an easement remains a *shared* right to use the property of another.



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[1] The requirements to establish a prescriptive easement (an easement by conduct) are actual possession of the property, open and notorious use, continuous and uninterrupted use for five years, use and possession hostile and adverse to the actual property owner, and under color of title or claim of right.