



## **PDHonline Course L123H (1 PDH)**

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# **Easements**

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# **Easements**

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## **Course Content**

### **Definition**

An easement can be defined as a “right, privilege or liberty”, which one has in land owned by another.

It is not ownership of the land, but rather an interest in the land.

It also is the land of another, so that one cannot have an easement on one’s own land. It is also limited to some special use and purpose.

### **Two Major Groups**

#### **Appurtenant Easements**

An easement that has been created for the purpose of benefiting other lands is appurtenant. The land benefited by the easement is known as the Dominant Tenement and the land burdened by the easement is known as the Servient Tenement.

These easements “run with the land” they do not disappear if they are not described in a subsequent conveyance or if they are not used.

#### **Easements in Gross**

This type of easement does not benefit any other lands, so there is a servient tenement but there is no dominant tenement. Common examples of these types of easements are gas pipeline easements and utility easements.

### **Common Types of Easements** **Surveyors Encounter**

There are an infinite number of types of easements and they may be created for any purpose. There are several however, that surveyors encounter frequently.

#### **1. Right of Ways**

The right of way is the most common type of easement that is encountered by the Land Surveyor. Right of Ways may be for ingress and egress, for utility lines, pipelines or highways.

The term “Right of Way” in a deed is frequently used to describe not only the easement but, the strip of land occupied by the use. They may be acquired in fee, by easement, by dedication and/or by prescription.

### **Public Right of Way**

These are typically highways or public roads. Every citizen has the right to use them.

### **Private Right of Way**

These are for a particular person separate from the general public.

## **2. Drainage Easements**

These easements pertain to carrying runoff over the lands of others.

## **3. Flowage Easements**

These easements pertain to the right to flood water onto the land of another or others. They are common and can create problems if not addressed. Some of these easements were based on mill rights created in the 17<sup>th</sup> century. Normal title abstracts usually do not discover these easements unless they are carried forward in recent conveyances. These easements were frequently granted for large tracts of land that extended far inland from the lake or river, some of these tracts have been subsequently subdivided without being released from these easements.

## **4. Slope Easements**

These are typically shown on highway parcel maps and provide rights to maintain slopes adjacent to the highway. These easements may terminate if the slopes no longer need to be maintained. Specific wording in the deeds will specify if this is the case.

## **5. Utility Easements**

These easements are common in platted subdivisions, usually for underground utilities such as electric, telephone and cable TV. They also can be for utility poles and wires, pipelines and fiber optic cable lines.

## **Creation of Easements**

Since easements are interests in land, they fall under the Statute of Frauds. They may be created in only two basic ways. Through writings or created at law. In order for written easements to be valid there is a necessity that the two parcels and the easement can be identified without ambiguity.

Basically, can a surveyor survey it on the ground, with certainty? The easement could fail if any one of the descriptions cannot be identified.

### **Recorded Easements:**

**Express:** This is a deeded easement and is the most commonly used method of creating easements. Surveyors have little trouble mapping these easements since their size and location are a matter of public record.

**Reservation or Exception:** These are also common methods of creating easements. Although these two terms are often used interchangeably, there is a difference between them. In an exception, the grantor withholds from the conveyance land, which would have been included. In a reservation, the grantor would possess a new right or interest that did not exist before.

**Dedication:** Easements are often created by dedication. Dedication gives the public the right of passage, but it does not burden the municipality with maintenance unless the municipality accepts the dedication. Acceptance is a separate event. Dedication occurs when a person gives rights in land to the public. The dedication may be written or unwritten and it must have been accepted either formally or implied. Knowing whether the public accepted the dedication may be beyond the surveyor's knowledge.

**Acceptance:** The acceptance of the dedication may be either express or implied. Express acceptance is normally an official action of the legislative body of the jurisdiction. Implied acceptance is more difficult to determine, since there is no filed documentation. Evidence of implied acceptance would be the use of the street by the public for some years and the repair of the street by the proper authorities.

**Eminent Domain:** This pertains to the power of the nation or sovereign state to take or authorize the taking of private property for a public use without the owners consent, conditioned upon the payment of just compensation. It is performed under a process called Condemnation. When land is taken for public use, unless the fee is necessary for the purposes for which it is taken, the condemner acquires only an easement. Unless a statutory provision providing for the acquisition of the fee, or a deed from the owner conveying the fee is provided, then only an easement is acquired.

### **Unrecorded Easements**

Land Surveyors have little trouble mapping recorded easements since their size and location are recorded in the public record. However, the following types of easements are more challenging for the land surveyor.

#### **Implied Easements**

There are three types of implied easements depending on how they arise.

### 1. Implied from Prior Use

A very common example of this type of easement is as follows. A piece of property has a garage at the rear with a driveway leading to it. The lot is subdivided into two tracts and the rear portion is sold and there is no mention made of the driveway or any right of way across the front portion of the tract.

The implication here is that an easement exists to the rear lot. These types of easements are not recorded and the surveyor needs to be on guard for their existence.

### 2. Implied by Necessity

This type of implied easement is necessary to the use of the property. And is also one of the most difficult to obtain. This type of easement typically applies to landlocked parcels. *N.J. Super. AD1965 Easement of absolute necessity is predicated upon strong public policy that no land may be made inaccessible and useless. Old Falls, Inc. v. Johnson. 212 A.2d 674, 88 N.J. Super. 441.*

This type of easement would also terminate when the necessity for it ceases. *Md. 1945. A way of necessity ceases to exist when necessity for it ceases. Condry v. Laurie, 41 A.2d 66, 184 Md. 317.*

### 3. Implied from a Subdivision Plat

When the owner of a tract subdivides, a purchaser of any lot in the subdivision requires an easement over the streets shown on the plat. There is also an implied dedication that has taken place.

## Prescription

An easement across the land of another can be acquired by prescription by long continued use of the land of another for the purpose of the intended easement.

The doctrine of prescription was originally based on the presumption of a lost grant. Since the use across the land has been continued for such a long time it must have been based on a grant, which has become lost or destroyed. *Maine Real Estate Law, Ch. 6.*

In order to acquire an easement by prescription the regulations in most states are the same as acquiring land by adverse possession. They depend on the same elements but differ since one is based on the claim of possession and the other a claim of use. Those regulations are as follows.

1. Adverse
2. Open & Notorious
3. Continuous
4. Exclusive
5. For the Statutory Period

### **Describing Written Easements**

Since easements are an interest in land created by a written document, there is an absolute necessity that the two parcels and the easement rights can be accurately identified. There should not be any ambiguity in the descriptions. Some items that should be included in the description are as follows.

1. The location of the parent parcel and the easement.
2. Specifically, the kind and manner of uses
3. Identify the users
4. Purpose of the easement

The land surveyor needs to be sure that when writing descriptions for easements that he/she does not create ambiguity. By including the 4 items listed above, a clear concise description can be written.