

Kimball, Tirey & St. John LLP

Easements

Susan E. Lamson, Esq.

April, 2015

What is an Easement?

An easement gives someone the limited right to use land owned by another. (Occasionally an easement will prohibit a land owner from doing something on his own land). Commonly easements give a property owner the right to:

- install utility lines and/or pipes across the land of another,
- access across the land of another (vehicular or pedestrian); or
- protect views.

How Are Easements Created?

Easements are usually created by a written document such as an easement agreement, deed or CC&Rs (usually recorded in the County Recorder's Office) or a court order. Infrequently easements can be created without a written or oral agreement.

How Long Does an Easement Exist?

Once created, an easement usually exists forever unless:

- the grantor and grantee of the easement agree otherwise;
- a court issues an order to terminate the easement; or
- a senior loan is foreclosed. If the easement is junior to the loan and there is a foreclosure of the loan, the easement may be "wiped out," or terminated.

What Information is Included in a Well-Drafted Easement?

Well-drafted easement documents clearly:

- describe the easement and the obligations of the parties;
- identify the properties benefited and burdened by the easement; and
- identify the location of the easement.

What Easement Issues Should a Buyer Investigate Before Purchasing Property?

Buyers should investigate easements before purchasing property. Sometimes, discoveries about an easement can lead to a cancelled escrow or reduced purchase price.

During the contingency period, buyers should carefully review the preliminary title report and any easement documents, to understand any easements that benefit or burden the property.

- Easements that benefit a property should be listed in Schedule A of the policy.
- Recorded easements that burden a property should be listed in Schedule B of the policy.

Purchasing an American Land Title Association ("ALTA") title insurance policy may help a buyer investigate and understand easement issues. The ALTA policy requires a property survey. The potential buyer (or the buyer's attorney) should carefully review the survey. The survey may help more accurately identify the location of improvements, easements, and property boundaries. It may reveal problems, such as easements that could impact future planned construction.

During the due diligence period the buyer may wish to investigate whether there are any disputes regarding the easements, obtain information about the relationship of the two parties (both the owner of the burdened parcel and the owner of the benefited parcel), obtain a history of expenses related to the easement, and determine whether the easement agreement is being properly enforced.

Title endorsements for easements should be considered, such as the CLTA Form 103.4. It provides the owner or lender with insurance that an insured easement affords ingress and egress to and from a specified public street.

How Can A Real Estate Attorney Assist With Easement Issues?

When an easement is being created, a knowledgeable real estate attorney can help draft a clear and enforceable easement, beneficial to the party creating the easement.

When a property is being purchased, a knowledgeable real estate attorney can help a buyer investigate and understand easements that may affect the property being purchased.

Kimball, Tirey & St. John LLP specializes in business and real estate law, landlord/tenant, and collections with offices throughout California. This article is informational only and should not be used as legal advice. If you have any questions regarding this article, please call (619) 231-1422.

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. While KTS provides clients with information on legislative changes, our courtesy notifications are not meant to be exhaustive and do not take the place of legislative services or membership in trade associations. Our legal alerts are provided on selected topics and should not be relied upon as a complete report of all new changes of local, state, and federal laws affecting property owners and managers. Laws may have changed since this article was published. Before acting, be sure to receive legal advice from our office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers and Legal Articles, please consult the resource section of our website.