

Overview of Easements and Property Law

2009



Real Property

Is the land and that which is affixed to it or which is incidental or appurtenant to it.



Land

Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.



Affixed

Something is deemed to be *affixed* to land when it is attached to it by roots, as in the case of trees, vines or shrubs, or embedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.



Incidental or Appurtenant

Something is deemed to be *incidental or appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.



General Property

- Every kind of property which is not real property is considered personal property.
- A person who owns property may possess and use it to the exclusion of others.



Conservation Districts

To construct a watershed retention structure, to impound water, or install other works of improvements, a District must either:

1. Own the land, or
2. Have a legal right to use the land (Easement)



Ownership of Land

- There are many different types of land ownership but the most common is ownership in fee simple or fee title.
- The owner of land in fee simple has the right to the surface and to everything permanently situated beneath or above it and the right to use it as desired and according to law. Fee is the broadest property interest allowed by law and endures until the current holder dies without heirs.



Easement

- A right of one person to go onto the land of another and make limited use thereof.
- Example: Water Retention Structures
- In Oklahoma the costs of repair and maintenance are the duty of the easement holder if there is no agreement to the contrary.



District Easements

- Easements for Impoundment and flowage rights are the primary way districts hold property rights.
- Most district easements impose conditions upon the districts to “operate and maintain” the structures, as a general rule.



General Language

District easements, in general:

- allow for the construction of a dam, for permanent storage of water in the sediment basin,
- for floodwater to be temporary stored after heavy rains in designated flood pool areas, and
- for District representatives to have access to the dam for operation, maintenance, inspections and repairs.



Perpetual

It is common for easements to be of a perpetual nature which means that it stays with the property irrespective of change of ownership.



Landowner Cannot

Under an easement the landowner cannot:

- Deny the district access to operate and maintain a structure,
- Undertake activities that would impair the purpose of the district's structures,
- Undertake activities that damage the structure including its appurtenances (example: the principle or emergency spillways), or
- Allow or convey to others the ability to do any of the above.



Landowner May

Under an easement the landowner may:

- Impose reasonable restrictions on the district's points of access to the structure;
- Utilize the area around the structure in a manner that won't impair the project; and
- Utilize the structure in a reasonable manner and in ways the landowner and district can agree upon.
 - (Before a district agrees to a landowner's use, if the use is not specifically provided for in the easement then the district needs to think long-term about who else might want the same benefit and about the ramifications,



Successors in Interest

- These are the persons who succeed to the original landowner's interests in the property.
- Generally there are two types:
 - Heirs
 - Purchasers



Problems

Development of rural areas in which a floodwater retarding structure is located is creating more problems.

– Access issues

- Outright denial of access
- Limited access

– Use issues

- Objections to maintenance (rehabilitation)
- Constructive or silent agreement to uses by prior landowner (this is where long-term thinking about agreeing to landowner uses comes into play. If the original landowner got to do it, can ALL successors do it?)



Enforcement of Easement

When a district has an easement, it is accepting the responsibility to protect and care for it for a very long time - perpetuity.

There are three key components to easement enforcement.

- 1.) Preventing violations from occurring in the first place.
- 2.) Having the ability to deal with a proposal to change an easement's restrictions.
- 3.) Having the means to enforce the restrictions of the easement when violations occur.



Prevention

Preventing violations from occurring should be your first objective.

- It begins with a carefully thought out easement deed. Look to the future.
- Every easement is different.
- Are there possible points of contention that could crop up?
- Try not to leave anything to chance. A “well-drawn deed” is the beginning of a strong defense. A strong cooperative working relationship with the landowner is important and make sure the district periodically explains the details of the easement and its restrictions to subsequent landowners.
- Also meticulous, consistent and timely monitoring records is your next line of defense.
- Allow for easy access to your organization and information regarding the easement.



Changes and Amendments

- Proposals to change easement restrictions usually come from subsequent property owners.
- The easement holder should be wary of changing restrictions included within their easements.
- There are times when changes are necessary; when mistakes have been made during the drafting process for example
- In some instances the property owner wants to change the amount of area the easement covers
 - beware of these requests because they can have future consequences



Legal Remedies

- If a violation does occur and can not be dealt with successfully through negotiation and settlement with the landowner or other entities then a district needs to look at civil legal remedies.
- When a violation occurs that must be stopped immediately before irreparable harm can be done, a district may have to seek an injunction.
- “An injunction is a writ granted by a court of equity which requires someone to do or refrain from doing a certain act.”
- If you have to go to court, be prepared. If you have documented the easement history, you have a much better chance of success.
- Going to court should only be done as a last resort. It is an expensive proposition and can ruin the partnership created between the landowner and easement holder (the district) that has taken time to create. Your best enforcement option is to steward your easements properly and remember that your landowner is your greatest asset.



Interference

- Interference with an easement is a form of trespass. Therefore if a landowner interferes with the purpose and use of the easement the district, as the easement holder, is entitled to equitable relief. The district can seek a civil remedy against a landowner for unlawful interference with the district's enjoyment of the easement, particularly when the obstruction of an easement is of a permanent character.
- Courts frequently enjoin the obstruction of an easement and order the removal of encroaching structures at the landowner's expense. The fact that such removal may be costly is not ordinarily a consideration; however, a court may balance the relative hardships of the parties when the expense of removing an innocent encroachment would be disproportionate to the injury suffered by the easement holder.
- An easement holder also is entitled to protection from acts of third parties that interfere with the enjoyment and purpose of the easement. Such protection is available against third parties to the same extent that it is available against the landowner. For example, an easement holder may recover damages from or obtain an injunction against third parties who construct a building encroaching on the easement area, use the easement without authorization, or impede travel by parking cars on the easement area.

Limit Future Problems

- Make certain your title documents are RECORDED at the courthouse
- Make sure the title or easement documents have the correct name of the grantor or landowner
- Spell out agreed upon uses in the easement
- Spell out unacceptable uses
- Spell out terms of access (i.e. location, conditions, notice)
- Meet your obligations
- Communications with landowners
 - Keep up with the landowners
 - Inform owners of important issues (i.e. oil and gas issues, pipelines)
 - Inform new owners about the structures and the easements
 - Keep them updated about what the structure is – spillways, berms, flood pool, etc..
- Keep records of what you do and say



Performing O&M

- Check your easement before going to perform O&M work
- Make sure you have an easement and that it has been properly filed in the county clerks office
- Verify that the current land owner knows about the easement
- Know what is in your easement
 - Are there special requirements or restrictions (i.e. access)



Other Easement Problems

- Old easements from the Bureau of Indian Affairs
 - Recordation problems
 - Getting new easements (multiple owners)
- School Land (Commissioners of the Land Office)
 - No longer free to state entities
 - Application process



- General Rule on priority in easements – first in time
- Easements along riparian area



Conclusion

- Property Law is complex
- Disputes between landowners requires a property law attorney
- The Districts do not have jurisdiction for advising persons on property law nor should they try (same goes for OCC)
- Districts should refrain from getting involved in property disputes and issues



THE END

