

## Easements

An interest in another's land that burdens its use or enjoyment.

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A right to cross or use someone else's land for a specified purpose, and runs with the land.

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All easements are non-possessory interests, meaning it allows the holder of the easement to legally use land which the easement holder does not own.

## **Types of Easements recognized in Colorado:**

*Wright v. Horse Creek Ranch*  
697 P.2d 384 (Colo. 1985)

- 1) Easements by Way of Necessity
- 2) Easements by Pre-Existing Use
- 3) Easements by Express grant or Reservation
- 4) Easements by Prescription

## **Types of Easements: (generally)**

Affirmative:

right to go on owner's land

Negative:

restricts owner's use or development of the land

Creation: by express deed, must satisfy the

Statute of Frauds (*SoF*)

*Rarely; created by implication, see prescriptive easements below*

### **Easements in Gross** -

- always only servient tenement

Succession:

- burden runs w/land to serv. ten.

- **provided there is notice**

### **Easements Appurtenant** - 2 tracts

- benefit runs w/land to dominant tenement

- burden runs w/land to servient tenement

- **provided there is notice**

### **Prescriptive Easements:**

A **type of affirmative easement, created by implication, or adverse use**

Requires: 1) unity of title

2) deed severance based on

"implied intent" of deed **OR**

3) adverse use elements

### **Doctrine of Absolute Necessity** -

Access to public road may be implied IF grantee's land would otherwise be absolutely useless

### **Doctrine of Reasonable Necessity** -

Access to public road may be implied IF at time of deed: apparent; pre-existing; continuous; reasonably necessary for use of tract. If all of these, courts will assume **implied** intent.

## **Remedies for Breach:**

- Damages –  
*usually: nominal, actual, punitive*
- Injunctive relief
- Specific performance

## **Terminating Easements:**

- 1) by express terms of the deed
- 2) by release  
*(must satisfy Statute of Frauds)*
- 3) by unity of title/ownership
- 4) Prescription  
*(Statute of Limitations has run)*
- 5) Estoppel
- 6) Abandonment  
*(requires an affirmative action to permanently desert the easement. Non-use of the easement alone does not qualify as abandonment.)*
- 7) If implied, no more Necessity
- 8) Eminent Domain
- 9) Destruction of Servient Estate  
*(flood, Act of God, etc)*