



Easements Made Easy

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What Are Easements?



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Servitudes

A servitude creates rights or obligations, in favor of someone other than the property owner, that run with the burdened land



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Servitudes

- **Easements** – facilitate use of land
- **Profits** – right to remove from land
- **Covenants** – restrict use of land



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Easements

Create rights in the owner or holder of the dominant or benefited estate to enter and use for a specified purpose the servient estate, land owned or possessed by another

Easements are not possessory interests in land but burden title to the servient estate



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Easements

Easements generally require a dominant parcel of land and a servient parcel of land

Easements are thus generally appurtenant to the dominant and servient estates and will run with the land even if not expressly mentioned in the deed conveying title to either estate



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Easements in Gross

Easements in gross are personal interests in land not supported by dominant estate

They are not favored and will never be presumed

Typically recognized in the commercial or utilities context

PAJ Investment Group, LLC v. El Lago N.W. 7 th Condo. Ass'n, Inc., 405 So. 3d 401 (Fla. 3d DCA 2024)



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Easements

Presumed nonexclusive absent language indicating exclusivity –

Stephens v. Dobbins, 511 So. 2d 652 (Fla. 1st DCA 1987)

Owner of burdened land retains all uses that do not unreasonably interfere with the purpose of the easement

Can be over-burdened beyond original scope



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Easement Creation

- Express grant
- Reservation
- Prescription
- Implied by prior use
- Plat dedication
- Way of necessity
- Statute

Easements may be created or arise in many different ways



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Easement by Express Grant

- Writing
- Signed by the grantor (owner of the servient estate)
- Recorded in the official records
- Best practice to adequately describe the easement area and use permitted, but failure to do so will not render easement void

Authorities:

- 725.01, F.S. – Statute of frauds
- 695.01, F.S. – Recording statute
- 689.01, F.S. – Conveyance statute
- *Hynes v. City of Lakeland*, 451 So. 2d 505, (Fla. 2d DCA 1984)(citing to *Seaboard Air Lines Railway Co. v. Dorsey*, 149 So. 759, 761 (Fla. 1933)
- *Kotick v. Durrant*, 196 So. 802 (Fla. 1940)



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Easement by Express Grant

Grantor gives and grants to Grantee, its heirs and assigns, an easement over a road known as Seminole which extends north from State Road 80 through Sections 36, 25, 24 and 13, Township 43 South, Range 40 East, Palm Beach County, Florida, at which point said road turns westerly and becomes known as the Osceola Road, which thence runs westerly on the Section line between Sections 11 and 14, 10 and 15, 9 and 16 to a bridge construction of which will be commenced within several weeks from the date of this deed. At such time as said bridge is constructed,



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Easement by Reservation

- Deed or grant
- “subject to” language may or may not be sufficient
- Best practice is to expressly use the language of reservation or grant
- Reservation of mineral rights implies a right of entry

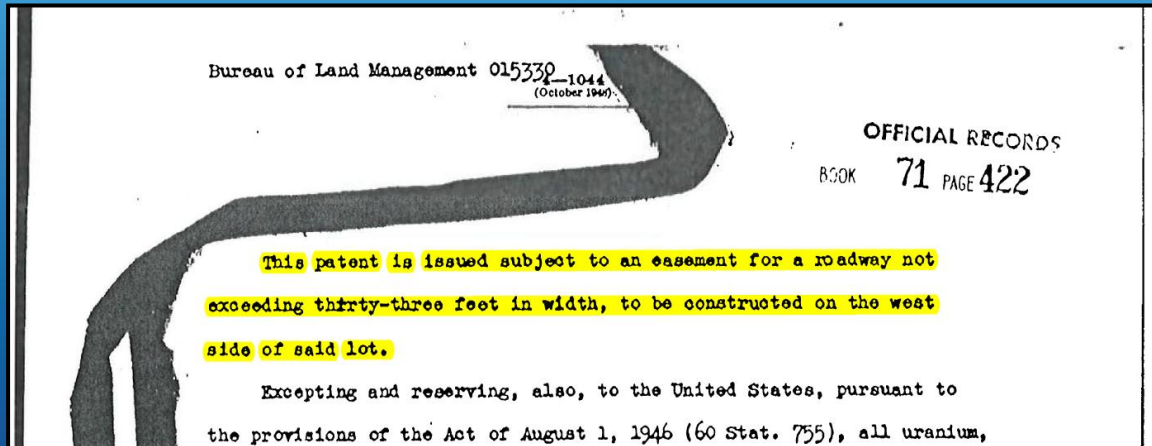
Authorities:

- *Procacci v. Zacco*, 324 So. 2d 180 (Fla. 1975)
- *Behm v. Sacli*, 560 So. 2d 431 (Fla. 5th DCA 1990)
- *Marchman v. Perdue*, 543 So. 2d 1286 (Fla. 1st DCA 1989)



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Easement by Reservation



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Easement by Prescription

- Where one has made certain particular and actual use of lands of another
- Continuously and uninterrupted for 20 years or more
- With knowledge of the owner or so open, notorious, and visible that knowledge is imputed
- As to a certain limited and defined area
- Adverse to the owner (use presumed permissive and must be shown otherwise by clear and positive proof)

Authorities:

- *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958)
- *Crigger v. Florida Power Corp.*, 436 So. 2d 937 (Fla. 5th DCA 1983)



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Easement Implied by Prior Use

- Easement only by specific written grant, reservation, dedication and acceptance, or prescription
- But evidence of a grant may be derived from long enjoyment, unity of title, and severance
- And, once created, valid implications may arise

Authorities:

- *Burdine v. Sewell*, 109 So. 648 (Fla. 1926)
- *Owen v. Yount*, 198 So. 2d 360 (Fla. 2d DCA 1967)
- *Kirma v. Norton*, 102 So. 2d 653 (Fla. 2d DCA 1958)
- *Tortise Island Communities v. Moorings Ass'n, Inc.*, 489 So. 2d 22 (Fla. 1986)



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Easement by Plat Dedication

- Where land is platted and
- The face of the plat depicts streets, waterways, parks and other such features
- It evinces an intention to dedicate an easement in those areas to the public and
- Where the developer conveys lots with reference to the plat the dedication cannot be revoked against grantees
- Note: two sets of easements may be created, public and private rights

Authorities:

- *Smith v. Horn*, 70 So. 435 (Fla. 1915)
- *Fla. E. Coast Ry. Co. v. Worley*, 38 So. 618 (Fla. 1905)
- 177.081(2), F.S.



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Easement by Statute

- Conservation easements
- Solar easements
- Cementaries

Authorities:

- 704.06, F.S.
- 704.07, F.S.
- 704.08, F.S.



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Creation of easements

- Owner of real property can create an easement, servitude, or other interest, even if the owner owns both the dominant and servient estates
- Easements so created prior to June 26, 2024, deemed valid

• Authorities:

- 704.09, F.S.
- *Winthrop v. Wadsworth*, 42 So. 2d 541 (Fla. 1949)
- *Hensel v. Aurilio*, 417 So. 2d 1035 (Fla. 4th DCA 1982)
- *One Harbor Financial, Ltd. v. Hynes Properties, LLC*, (Fla. 5th DCA 2004)
- *King v. Roorda*, 355 So. 3d 1001 (Fla. 2d DCA 2023)
- *AFP 103 Corp. v. Common Wealth Trust Services, LLC*, 388 So. 3d 149 (Fla. 3d DCA 2023)



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Easement Termination

- Express release
- Abandonment and nonuse
- Expiration
- Adverse possession
- Marketable Record Title Act
- Quiet title judgment
- Subsequent platting
- Merger

There are as many ways to terminate an easement as there are to create one



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Express release

- Writing
- Signed by the grantor (owner of the dominant estate and owner of servient estate)
- Recorded in the official records

Authorities:

725.01, F.S. – Statute of frauds
 695.01, F.S. – Recording statute
 689.01, F.S. – Conveyance statute



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Abandonment

- For abandonment of an easement all of the elements of equitable estoppel must be shown
- Equitable estoppel is a doctrine by which a party is prevented from setting up his legal title because he has through his acts, words, or silence led another to take a position in which the assertion of the legal title would be contrary to equity and good conscience
- Nonuse may destroy an easement by prescription, it will not destroy an easement by grant
- Clear and affirmative intent to abandon

Authorities:

- *Wiggins v. Lykes Bros., Inc.*, 97 So. 2d 273 (Fla. 1957)
- *Metropolitan Dade County v. Potamkin Chevrolet*, 832 So. 2d 815 (Fla. 3d DCA 2002)
- *Dade County v. City of North Miami Beach*, 69 So. 2d 780 (Fla. 1953)
- *Florida Power Corp. v. Lynn*, 594 So. 2d 789 (Fla. 2d DCA 1992)



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Expiration

- Written instrument or court order provides when easement is to expire
- Expiration upon nonuse for an express period of time requires proof of that nonuse
- Once expired, recurrence of use or contingency does not revive easement

Authorities:

704.04, F.S.

Cohen v. Pan Am. Aluminium Corp., 363 So. 2d 59 (Fla. 1978)

Amlea (Florida), Inc. v. Smith, 567 So. 2d 981 (Fla. 2d DCA 1990)



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Adverse Possession

- Adverse possession can extinguish an easement
- Servient owner must show continuous prevention of the easement's use for the prescribed period by clear, definite, and accurate proof

Authorities:

- *Bentz v. McDaniel*, 872 So. 2d 978 (Fla. 5th DCA 2004)
- *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958)



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Marketable Record Title Act

- Root of title, post easement,
- Of record for 30 years or more
- Does not apply to any statutory way of necessity
- Not in Use

Authorities:

712.01, F.S.

712.02, F.S.

712.03, F.S.

712.04, F.S.

Blanton v. City of Pinellas Park,
887 So. 2d 1224 (Fla. 2004)



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Subsequent Platting

- Where the owner of a dominant estate joins with the owner of the servient estate to plat both properties, and the plat does not show the easement, the easement is extinguished

Authorities:

- *Estate of Johnson v. TPE Hotels, Inc.*, 719 So. 2d 22 (Fla. 5th DCA 1998)



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Merger

- When ownership of the dominant and servient estate unite in one owner, the easement is extinguished by merger
- Both estates must be the in the same owner at same time, co-extensive and equal in validity, quality, and all other circumstances of right
- Best practice is to express any intent to eliminate the easement

Authorities:

Lacy v. Seegers, 445 So. 2d 400 (Fla. 5th DCA 1984)

Tyler v. Price, 821 So. 2d 1121 (Fla. 4th DCA 2002)

But, what about 704.09, F.S. ?



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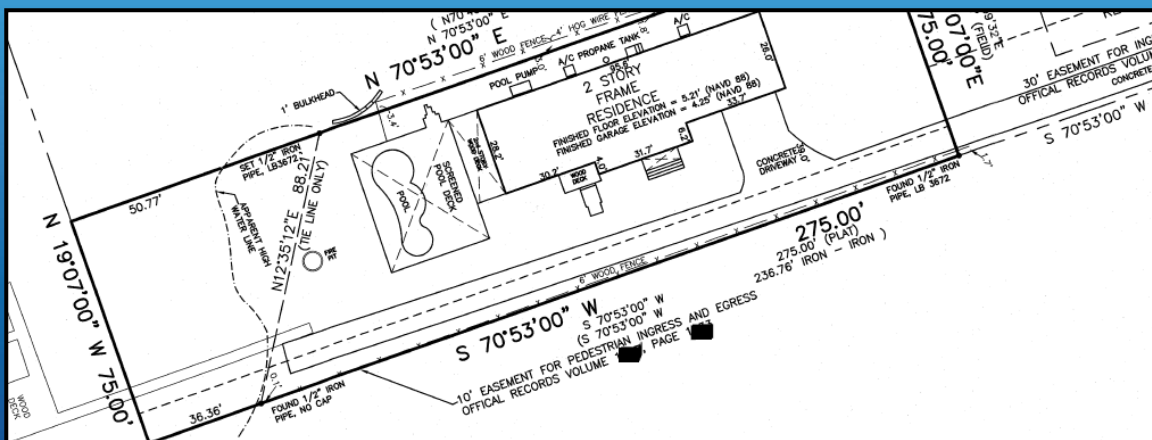
Evaluating an Easement

- Presume validity absent clear and unambiguous evidence otherwise
- However, just as importantly, if an easement or other instrument is not excepted from coverage under a prior policy, it's important not to assume that was a mistake; instead, look for the reason why it might no longer be in effect
- Keep the standard survey exception or get a survey



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How (not) to Except an Easement



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How (not) to Except an Easement

10. Any rights, easements, interests or claims that may exist by reason of, or be reflected by, the following facts shown on the survey dated [REDACTED].
 1. Fence encroachment over Northerly property line and into 10 foot Easement for Pedestrian Ingress and Egress on Southerly side.
 2. Exception for any matters relating to the bulkhead and wood deck located on, or adjacent to, the property.



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Thank You!
for attending

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