

**New Jersey
N2K Hour:**

**Easements in
New Jersey**

**Webex Presentation:
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What is an easement?

- An easement is basically the right to use land that isn't yours for some purpose.
 - Examples: Driveway easement, beach access over private land, or a utility easement.
- An easement is a non-possessory interest.
 - The person/entity who benefits from the easement does not gain any ownership in the affected land – just a right to use it.
 - The owner of the land still has all their rights of ownership – now they are just subject to the terms of the easement.

Easement Terms

- Dominant Estate – The land that is benefited by the easement.
- Servient Estate – The land burdened by the easement.
- Appurtenant Easement – Has a dominant/servient estate and runs with the land.
 - Keep in mind: an easement can run with the land without specific reference in subsequent conveyances of that land.
- Easement in gross – Only a servient estate. Best example is a utility easement (no parcel of land is being benefited).

How to create an easement

- There are a couple items to consider when creating an easement by grant or reservation:
 - Subject to the Statute of Frauds (must be in writing with an adequate description of the land N.J.S.A. 25:1-5; - 11).
 - Must be executed by ALL owners of the burdened land (servient estate)
 - Watch out for mortgages recorded before the easement - a foreclosure can wipe it out.
 - An easement by grant can be included in a deed or a separate instrument.

How to create an easement (continued)

- An easement by reservation is found in a deed where the grantor reserves the easement for themselves.
- Remember – an easement that runs with the land to the benefit of the grantee (and their heirs/successors/assigns) is perpetual.
 - An easement can be temporary – best example is a temporary construction easement.
- Pay close attention to a filed map when reviewing title, an easement can be created by showing it on the map (if there is also a separate written instrument)

Easements by Implication (Necessity)

- Easements by Implication are an exception to the rule that an easement must be in writing.
- Example: A large piece of property abuts a public road. There is a building on the back half with a driveway that leads to the road. At this point, there is a “quasi-easement” benefitting the back half. Property is then subdivided later on without a written easement (by grant or reservation) and front portion is sold to a different owner. The quasi-easement is now an easement by implication.
- But! This isn’t automatically an insurable easement at this point.

Easements by Necessity

- Easements by Necessity are a form of Easement by Implication.
- Must have four elements:
 - Prior common ownership of the dominant and servient estates.
 - Severance of one of the parcels.
 - Necessity for an easement at the time of severance.
 - Continuing necessity for an easement.
- Most common in landlocked properties after subdivision of a larger lot.

Easements by Prescription

- Easements by Prescription are basically created by Adverse Possession.
 - Use of property must be (1) adverse, (2) hostile, (3) continuous, (4) uninterrupted, (5) visible and (6) notorious for a specific period of time.
 - At least 20 years (to defeat a legal challenge)
 - N.J.S.A. 2A:14-30 requires use to be for at least 30 years (60 years in the case of wooded/uncultivated tracts)
- Remember – we don't automatically insure this type of possessory interest – there must be a court order granting the easement by prescription.

Termination of Easements

- Several ways to terminate an easement:
 - Written instrument – owner of the dominant estate can terminate the easement in writing (should be recorded)
 - Easements can also self-terminate pursuant to its own terms.
 - Merger – if the owner of the dominant estate acquires the servient estate as well, the easement no longer is necessary.
 - Abandonment – owner of the dominant estate no longer uses the easement for an extended time period AND owner of servient estate relies on the non-use to their detriment.

Termination of Easements (continued)

- Termination by Overburdening
 - Occurs when the dominate estate uses the easement in a way that goes well beyond the original intended use.
 - Example: Person A gives an easement to Person B for a right of way to access their large farm from a public road. Traffic is consistent with the running of a farm. One day, Person B sells their farm to a developer who coverts the farm into a 100 home neighborhood. Now the right of way is overburdened with residential traffic. The easement is most likely destroyed.

Easements vs. Licenses

- An easement differs from a license in several ways:
 - Typically, licenses are temporary rights to use someone's land
 - Licenses do not have to be in writing
 - Licenses are usually revocable
 - Licenses are usually non-transferrable
- License examples: event tickets, a dock license from the State

Easements vs. Profits a Prendre

- Pronounced PAWNdrah
- Specific right to go on to someone's land and remove something (minerals, soil, timber, etc.).
- Key difference is that the person has a right to take something off the land.
- Other examples: Right to allow animals to graze on property, right to hunt or fish on property.
- These are similar to licensees in that they can be revocable and can have time limits.

Easements and Title Insurance Considerations

- When it comes to insuring easements, the only types generally accepted are by grant or reservation, be appurtenant, and perpetual.
- As previously discussed, easements by implication or prescription typically require a final court order to become finalized.
- Keep in mind – an easement is almost always going to be both a benefit and burden, even to the dominant estate.
 - In most cases, the party benefiting from the easement is also burden with its upkeep and maintenance.
 - Therefore, even if the easement is to be insured, it also must be excepted for.

Easements and Title Insurance Considerations

- If an easement is to be insured, you must also search the servient estate to confirm its valid creation and if any interested parties may destroy it.
- Take extra precaution when dealing with any sort of termination other than by written instrument (or the easement automatically terminating by its terms).
 - All factors must be carefully weighed to determine if in fact the easement has been terminated.
- If easement is NOT to be insured – except for it in Schedule B-II

Easements, Surveys, and Affirmative Coverage

- A survey is a great tool to learn a great deal about an easement.
- A survey (which shows the easement) is almost always necessary when contemplating affirmative insurance language.
 - Typical requests usually refer to encroachment or the use of the land
- A review of both survey and the easement are necessary to determine what, if any, affirmative coverage can be provided.
- As always, you must contact your Underwriter before including affirmative coverage for easements.

Easements and Endorsements

- There are a number of NJ approved endorsements that relate to easements:
 - ALTA 9 Series (Covenants, Conditions, Restrictions)
 - ALTA 17 Series (Access)
 - ALTA 28 Series (Easements and Encroachments)
 - ALTA 36 Series (Solar Projects)
- Unless allowed by specific company practice, these endorsements require a survey to be provided.
 - Always refer to Virtual Underwriter to confirm specific guidelines for endorsements.

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Example : Absentee

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