

PRIVATE ROADS

FREQUENTLY ASKED QUESTIONS

There are a great number of private roads throughout County. Consequently, the Transportation Department staff is often requested to respond to questions about the rights and obligations of property owners served by such roads. For all questions of importance, the inquiring party should seek legal advice, because an accurate answer is dependent upon the particular facts and circumstances. However, general principles can provide some guidance.

HOW ARE PRIVATE ROAD EASEMENTS CREATED?

Private road easements may be created in a number of ways. The most common are express grant, express reservation, express exception, and by reference. The first three are usually created by document and the last by recorded map. There are other ways easements may be created, but a determination as to whether they exist or not is dependent on facts not readily available in the public records. These would include easements created by prescription, by necessity, and by implication.

WHERE CAN I FIND RECORDS RELATING TO PRIVATE ROAD EASEMENTS AFFECTING MY PROPERTY?

Among the best sources are the public records available through the County Recorder's Office. These may be accessed directly by members of the public through computer terminals at the Recorder's Office. Easement information is contained in individual deeds and in subdivision maps, both of which are recorded documents.

A copy of your title insurance policy should show all recorded easements affecting or appurtenant to your property. If you know the Assessor's Parcel Number for your property, or the lot/parcel number in a subdivision or parcel map, you may contact the County Surveyor's Map Room at (805) 654-2068 to confirm there is a map on file showing your property and the road easement serving it.

WHO IS RESPONSIBLE FOR MAINTAINING THE PRIVATE ROAD SERVING MY PROPERTY?

Section 854 of the California Civil Code provides in part that the owner of an easement is responsible for maintaining it. If the easement is owned by more than one person, or attached to parcels of land under

different ownership, the costs of maintaining it shall be shared in accordance with any agreement between the owners, or if there is no agreement, proportionately to the use made of the easement by each owner. A maintenance obligation may be enforced through civil action.

WHAT IF I WANT TO IMPROVE THE PRIVATE ROAD EASEMENT?

Absent an agreement to do so, users of a private road easement may not be required to participate in the cost of improving the private road except for costs associated with maintaining it in good repair. If you would like to improve a private road easement serving your property, you should consider entering into a written cost sharing agreement with other users.

DOES THE PRIVATE ROAD EASEMENT ALLOW A SERVED PROPERTY OWNER TO EXCAVATE WITHIN THE EASEMENT TO INSTALL UTILITIES?

The easement may or may not, allow the installation of utilities. A careful reading of the easement language is required. If it is not clearly stated that the easement is also for utilities, you should consult your attorney for review and advice.

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MAY A PUBLIC UTILITY OR A CABLE TELEVISION COMPANY INSTALL ITS FACILITIES IN A PRIVATE ROAD EASEMENT ON ITS OWN INITIATIVE?

It may, if the private road easement is not exclusive and the public utility or cable television company has been granted an easement that is coterminous or within the private road easement. Subdividers often create public utility or cable easements within mapped roadways, which they convey to utility companies by separate document. If a public utilities easement has not been created, the public utility or cable television company must seek an easement from the owners.

CAN MY NEIGHBORS ENCROACH INTO THE PRIVATE ROAD EASEMENT WITH FENCES AND PARKED VEHICLES, PARTIALLY BLOCKING THE EASEMENT?

If your neighbors are the fee owners of the area encumbered by the easement, they may use it in any manner that does not unreasonably interfere with the purpose of the easement. However, they do not have the right to unreasonably interfere with the exercise of your easement rights.

IF MY NEIGHBOR IS UNREASONABLY INTERFERING WITH MY EASEMENT RIGHTS, WILL THE COUNTY TAKE ANY STEPS TO ENFORCE MY RIGHTS?

This is a civil matter between two private parties. Therefore, you should discuss the matter with your neighbor and try to resolve it amicably. If you cannot resolve the matter, you may consider seeking legal counsel to initiate an action for enforcement of the easement. The County staff has no standing in such matters to assist either party.

REQUESTS AND INQUIRIES

If you have questions, requests, or suggestions, please call Department at: or through the "Contact Us" link at: