



# Little Black Book Of **EASEMENTS**

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## *Note From The Author*

*An easement is a particular subset of real estate law, that affects the large majority of property owners. From the prospective purchaser who discovers there is an easement for a sewer which runs under the ground in the backyard where they envision putting in a swimming pool, to a cottage owner who purchases a recreational property only find out that they cannot access the road in the winter time.*

*The laws of easements are vast, complex and fact specific.*

*This “Little Black Book of Easements” is designed as a general guide to help give you a better understanding of easements in plain english. I receive many inquiries regarding easements and the initial conversation involves a caution of “without reviewing the search on title, I cannot be certain as to what your rights and obligations are.”*

*If you have an easement issue, the best advice I can give you is to find a lawyer who practices in the area and retain them for a one hour consultation. Bring your documents with you and ask all the questions you have - you paid for the hour. The answers will certainly be better than a Google search.*

*Property has its duties as well as its rights. ~Thomas Drummond*

**Question:**

What is an Easement?

**Answer:**

An Easement is the right of an owner of property (the "Dominant Tenement") to require another property owner (the "Servient Tenement") to do - or not do - something or to grant the Dominant Tenement owner a right to use the Servient Tenement's property.

**Question:**

Can the Dominant and Servient Tenement owners be the same?

**Answer:**

No. The Dominant and Servient Tenement owners must be different. If they are the same, then the easement will no longer exist, as it will be considered to have merged.

**Question:**

What is the purpose of an Easement?

**Answer:**

An easement is in place to accommodate the needs of a Dominant Tenement in the use of another's land for a specific limited purpose. While they have the ability to use the property or land, the legal title (i.e ownership) to land remains with the Servient Tenement.

**Question:**

Is an Easement an interest in land?

**Answer:**

Yes, it is an interest in land, but does not constitute ownership of the land.

**Question:**

Are all Easements the same?

**Answer:**

No. There are - generally speaking - 6 types of common Easements - Positive/Negative Easements, Continuous and Apparent Easements, Easement of Necessity, Quasi-easement, Easements in Futuro and Equitable Easements.

**Question:**

How do I obtain an Easement?

**Answer:**

There are several ways to obtain an easements. Such as: by express grant, reservation or agreement, by prescription, by implication and by statute.

**Question:**

I have been using a path in my neighbour's backyard for years, do I have an Easement along their land?

**Answer:**

Generally speaking, no. The use of the easement cannot be interrupted, otherwise the clock will reset. So, for example, if you use it for 5 years and then not for 2, the clock for a prescriptive easement resets.

**Question:**

How long a period are we talking about?

**Answer:**

20 years.

**Question:**

Can an Easement be lost?

**Answer:**

Easements can be lost or extinguished by release, merger, statute or duration (if it was given for a short period of time).

**Question:**

If I stop using an Easement for a period of time, does that mean I lose the right to use it?

**Answer:**

No. Simply not using an easement does not take the right to future use away from you.

**Question:**

What are particular Easements?

**Answer:**

Particular Easements are special easements that relate to the right-of-way, right-to-air, right-to-light, rights in respect of water and rights of support of party walls.

**Question:**

How do I know what my rights and obligations are in respect of my Easement?

**Answer:**

In order to fully understand your rights and obligations, a search of title is needed to see what the recorded easement provides for.

**Question:**

What if there is no recorded Easement on title?

**Answer:**

If there is no recorded easement, then a legal analysis is needed to determine if an easement is created through another manner - such as prescription, necessity, etc.

**Question:**

What if my neighbour is not using the Easement as it provides, for example, they are parking their car on a right-of-way?

**Answer:**

There are various remedies to "correct" the inappropriate use of an easement, but do not engage in self-help remedies (i.e. blocking the right-of-way). You should seek legal advice and if necessary, obtain the assistance of the courts.

**Question:**

What if I have a dispute with my neighbour regarding an easement?

**Answer:**

If there is a dispute, you should speak with a real estate lawyer to determine your rights and obligations and be sure to bring your documents with you. Once your rights and obligations are determined, you can then speak with the neighbour to try and resolve it or you can hire a lawyer to enforce your rights.

## About The Author



# Andrew Fortis

Andrew leads Hummingbird Lawyers Real Estate and Corporate / Commercial practice.

Andrew is Hummingbird's go-to guru for commercial and residential real estate transactions, offering over 16 years experience, a Master's degree in Real Estate Law, and one of a select few lawyers Certified as a Specialist in Real Estate Law. He acts for vendors, purchasers and lenders on acquisitions, financing, and disposition matters. He also represents landlords and tenants to negotiate leases and enforce rights and remedies, including title disputes and matters involving deficient title.

Andrew's practice covers deals large and small, from residential purchase agreements to capital and asset acquisitions to complex financing.

Andrew's corporate practice includes incorporations, mergers, shareholder agreements, bulk sales and other commercial agreements.



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