

Prescriptive Easement

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What it is, how it is acquired and the burden of proof in Court

Prescriptive Easement in California Defined

A Prescriptive Easement is method of acquiring a limited right to use someone else's property (located in California) by continuously using that property in the manner required by law for five years. The right acquired to use the easement must be less than the right of ownership.

How a Prescriptive Easement is established

To establish an easement the use must be 1) open and notorious, 2) continuous and uninterrupted, 3) under a claim of right hostile (without permission) to the owners' right to exclusive use as owner, 4) for a period of 5 years

Clear and Convincing Evidence Required

In a Court action to establish a Prescriptive Easement or to be used as a defense to a Quiet Title or Trespass Cause of Action the burden of proof is on the person claiming the easement to be proven by Clear and Convincing Evidence.

Defense of Permissive Use can be inferred by conduct

A defense of permissive by the landowner can be either oral or written, express or implied by the conduct of the parties or general neighborly accommodations.

Sources

Civ. Code § 1007; Code Civ. Proc. § 321; Warsaw v. Chicago Metallic Ceilings, Inc. (1984) 35 Cal.3d 564, 570, 199 Cal.Rptr. 773, 676 P.2d 584 ; Kapner v. Meadowlark Ranch Assn. (2004) 116 Cal.App.4th 1182, 1186, 11 Cal.Rptr.3d 138 ; Harrison v. Welch (2004) 116 Cal.App.4th 1084, 1090, 11 Cal.Rptr.3d 92 ; Mehdizadeh v. Mincer (1996) 46 Cal.App.4th 1296, 1305, 54 Cal.Rptr.2d 284 ; Otay Water Dist. v. Beckwith (1991) 1 Cal.App.4th 1041, 1045, 3 Cal.Rptr.2d 223 ; Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 235, 251 Cal.Rptr. 49 ; Mesnick v. Caton (1986) 183 Cal.App.3d 1248, 1260-1261, 228 Cal.Rptr. 779 ; Thomson v. Dypvik (1985) 174 Cal.App.3d 329, 338-339, 220 Cal.Rptr. 46 ; Applegate v. Ota (1983) 146 Cal.App.3d 702, 708, 194 Cal.Rptr. 331 .