

Uniform Easement Relocation Act

Texas Surveyors Association

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TEXAS REAL ESTATE & PROBATE INSTITUTE

- “T-REP”
- Texas nonprofit corporation
- Created 2023 by State Bar Real Estate & Probate Section Leaders
- Focus: Make Real Estate & Probate Law BETTER
- Texas Property & Trust Code
- Consider adopting Uniform Laws
 - Uniform Law Commission
 - Reasonable, uniform laws benefit all states
 - Texas had adopted uniform laws
 - Uniform Assignment of Rents
 - Uniform Heirs Partition

HISTORY

1947- *Cozby v. Armstrong (Tex App. 1947)*

Servient owner's *reasonable, unilateral* relocation upheld

All later cases reject unilateral relocation – required mutual consent of holder

2000- *Restatement of Property(3d)- Servitudes* Sec. 4.8

Permits *reasonable* changes, at servient owner expense, to permit servient land's normal use/development,

IF no adverse affect, no increase in burden, no frustration of purpose

2020- *Uniform Easement Relocation Act*

Restatement approach but non-waivable

Adopted in 4 States - pending in Missouri

SUMMARY

Servient estate owner request for judicial approval

Burden on the *servient* estate owner

May NOT *materially*:

- (1)lessen the utility to the holder
- (2)increase the burden on the holder
- (3)impair an affirmative easement-related purpose
- (4)impair safety
- (5)impair the physical condition, use or value of the dominant estate nor
- (6)impair lenders, tenants, or other interest holders in the dominant estate.

During relocation, must mitigate disruption

SUMMARY OF UERA

- NO legal fees/costs – either party
- Good Faith obligation – implement
- Relocation Affidavit – completion
- All parties with an interest = Necessary parties
- Expenses of Relocation – Servient estate owner
- Detailed Findings – Entitlement to change.

SUMMARY OF UERA

Excluded:

- public utility easements
- conservation easements
- negative easements (restrictive covenants)
- all gov't easements
- common carrier pipelines

Example

NON-WAIVER

- UERA- Right “may not be waived, excluded, or restricted by agreement”
 - "even if:
 - (1) the instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of this [act];
 - (2) the instrument creating the easement requires consent of the easement holder to amend the terms of the easement, or
 - (3) the location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.”

NON-WAIVER

Restatement- permits waiver

Common Law- permits waiver

Texas is Freedom of Contract state

BUT- Every new form will include waiver if permitted!

Consumer Protection is part of UERA

LAWS IN OTHER STATE

Idaho, Virginia, New Mexico, Kentucky, Louisiana –
statutes on easement relocation

Louisiana law:

"[if] the original location [of a servitude] has become more burdensome for the owner of the servient estate or if it prevents him from making useful improvements on his estate, [the owner of the servient estate] may provide another equally convenient location for the exercise of the servitude which the owner of the dominant estate is bound to accept."

RATIONALE FOR UERA

- Increase *utility* of land
 - w/o affecting the easement holder
- Prevent *ransoms* in exchange for consent
- Encourages easements and *lowers their price b/c* easements many no longer unduly restrict future development

RATIONALE FOR UERA

- Current Law (Mutual Consent & Reasonable Use Rules) benefit only easement holder:
 - Mutual Consent- Holder must consent to changes
 - Reasonable Use- Holder has right to change "manner, frequency and intensity" due to "developments in technology and to development"
 - UERA *balances the relationship*
- Lower the temperature of disputes around non- express easements:
 - Estoppel
 - Implication
 - Necessity
 - Prescription

Possible relocation reduces the stakes to the servient estate
Encourages settlement and reduce litigation

SUPPORT FOR UERA

Restatement - Sec 4.8(f)

- Consistent with UERA
- Permits waiver

The Law of Easements and Licenses in Land - Bruce and Ely, updated by Brading

- Acknowledges UERA solves many issues
- Criticizes non-waiver

Private Land Use Arrangements: Easements, Real Covenants and Equitable Servitudes - Prof. Korngold(NYU Law)

Legal Commentary

Nat'l Ag. Law Center (U. of ARK.)

TEXAS CASES

Sisco v. Hereford

694 S.W.2d 3 (Tex. App. -- San Antonio 1984, writ ref. n.r.e.)

- Specified easement area deteriorated making use difficult
- Proposed relocation was more practical, convenient and reasonable
- Denied - Consent from holder is required

Samuelson v. Alvarado

847 S.W.2d 319 (Tex. App. -- El Paso 1993, no writ)

- Easement by necessity
- Proposed relocation
- Rule: Holder has rights necessary for reasonable enjoyment of the easement with minimal burden to the servient owner
- Denied – Consent from holder required

Vrazel v. Skrabanek

725 S.W.2d 709 (Tex. 1987)

- Easement dedicated by plat
- Servient estate owner relocated
- Holder used new location
- Permitted – Holder consent required, but given implicitly by acceptance/use

TEXAS CASES

General Rule - No unilateral modification by servient owner, even if equitable considerations support change

Exceptions: Equitable considerations justify modification

Cozby v. Armstrong

205 S.W.2d 403 (Tex. App. – Fort Worth 1947, writ ref'd n.r.e.)

- Access Easement - tract divided into 3 portions
- Easement was located close to an owners home, who *unilaterally* relocated
- **Permanent injunction requested** due to equitable considerations:
 - (i) new road is suitable for the dominant estate holder
 - (ii) prior location deprived the servient estate owner of the reasonable use of her residence/land
 - (iii) new location eliminated dust and lights from automobiles passing near her home, and enabled use of a portion of her land previously cut off by the old road
 - (iv) new road was built at servient estate owner's cost
 - (v) "...change in the road was not so dramatic as to impair the rights and title of the [easement]..."

Trial Court denied

Appeals Court reversed and granter

Supreme Court upheld decision – “no reversable error”

SUMMARY

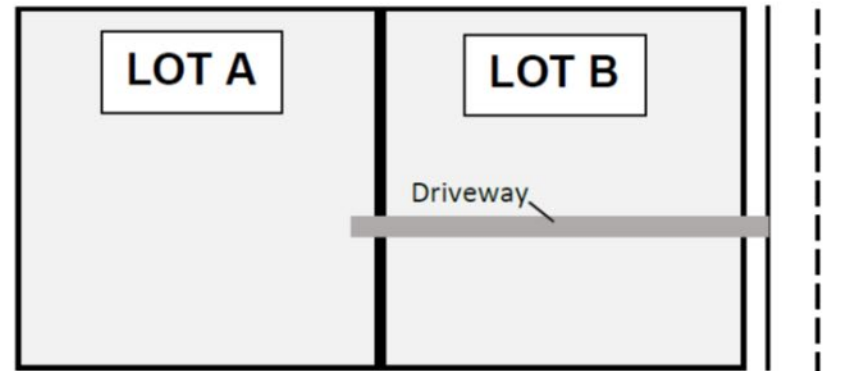
- GOOD PUBLIC POLICY SUPPORTS RELOCATING EASEMENTS
 - IF RELOCATION PERMITS REASONABLE USE OF THE SERVIENT ESTATE
 - NO MATERIAL ADVERSE IMPACT ON THE EASEMENT HOLD
 - COST PAID BY SERVIENT OWNER[GOV'T EASEMENTS EXCLUDED]
- RELOCATION WON'T IMPACT 3RD PARTIES OR CREATE DEFAULTS UNDER 3RD PARTY DOCUMENTS
- CONSISTENT WITH THE *COZBY* CASE



THE UNIFORM EASEMENT RELOCATION ACT

- A Summary -

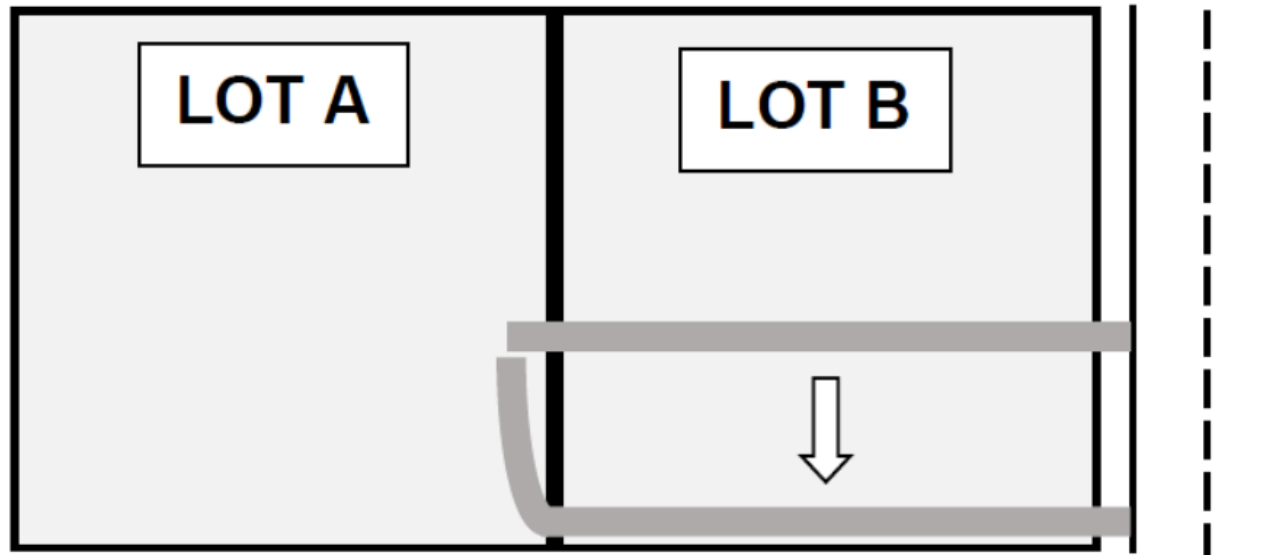
An easement is an interest in real property that gives the easement holder the right to use another person's land. For example, think of two neighboring lots: A and B. Lot B is adjacent to a public highway, but Lot A has no access to the road. The owners of the two lots could negotiate an agreement for the owner of Lot A to construct a driveway across Lot B, connecting Lot A to the road. If the agreement is formalized and recorded in public land records, we would say that the owner of Lot A holds an *easement* allowing access to the property via the driveway across Lot B.



An easement is legally tied to the property, not to the current owner. If either lot is transferred to a new owner, Lot A can still be accessed via the easement across Lot B. Thus, easements can endure for many years, even as the character and use of the properties change.

Easement Relocation

Now, consider what could happen if the owner of Lot B wants to develop the property. The easement allowing access to Lot A might restrict the development options. The owner of Lot B might prefer to relocate Lot A's driveway to another part of the property in order to create a larger area for development, as shown here:



In this situation, what rights does the easement holder have?

Under the traditional law of most states, an easement can be relocated only with the consent of both parties – the easement holder and the owner of the property burdened by the easement. But this power can be abused. In our example, the owner of Lot A could prevent the development of

Modernizing the Law

The Uniform Easement Relocation Act (UERA) modifies the rule requiring mutual consent for easement relocation. If the parties cannot agree, the UERA allows the owner of the burdened property (Lot B in our example) to get permission from a court to relocate an easement. The burdened property owner must provide advance notice of the relocation plan to all parties who own an interest in the property served by the easement (Lot A), and any of them may object to the relocation in court.

Before the court allows easement relocation, the burdened property owner must show that the relocation would not materially:

- reduce the usefulness of the easement,
- impose a burden on the easement holder,
- impair a purpose for which the easement was created,
- impair the safety of anyone using the easement, or
- reduce the value of the easement holder's property.

In addition, the burdened property owner must pay all the expenses of relocation and ensure that the easement holder's access is not disrupted during construction.

Certain exceptions apply: the UERA does not allow relocation of easements held by public utilities, or easements that restrict development, such as conservation easements and negative easements.

Conclusion

The Uniform Easement Relocation Act corrects an imbalance of power that allows easement holders to unreasonably restrict development of another person's property. The act provides an alternative procedure for court-ordered easement relocation as a safety valve in case the owners of the properties affected by the easement cannot agree to terms. Enacting the UERA will encourage flexibility and cooperation between property owners and protect the property rights of both easement holders and the owners of land subject to an easement.