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"Right to pass by permission" sign may protect your property from an uninvited and permanent use by another

By Ronald L. Richman

Ownership of real property, alone, will not prevent someone else from obtaining a right or interest in your property. A person can obtain a right or interest in your property, known as an **easement**, simply by using your property in an open, notorious, continuous and adverse manner for an uninterrupted period of at least five years. Adverse use simply means that you, as the owner of the property, have not expressly consented to the use of your property by another.

Property boundary and title disputes happen more often than you might think, even in crowded suburban areas like the Bay Area. Typically these types of disputes arise when your property is a gateway, or provides access, to another property. Examples can include a pathway or shortcut across your property to get to a public road, a business or another person's property (it's just easier to cut through your property than it is to go around your property).

In both residential and commercial properties, one way that you can protect against someone obtaining an easement on your property, i.e., obtaining a right to use your property without your consent, is by posting a sign that states that the right to pass by your property is by your permission. A recent case decided by our California Court of Appeal on March 27, 2006, Richard Aaron v. Dallas Dunham defines the scope and legal affect of the "right to pass by permission" sign.

To have any legal effect, the sign must comply with the requirements and language of California Civil Code Section 1008: (1) the sign must be posted at each entrance to your property or at intervals of not more than 200 feet along the property boundary line; (2) the sign itself must contain substantially the following language: "Right to pass by permission and subject to control of owner: Section 1008, Civil Code;" and (3) the sign must be posted by you, the owner of the property, or your authorized agent.

If the sign was posted by someone other than you, for example, the sign was put up by a person(s) leasing your property, the sign has no legal effect unless you expressly (and this should be done in writing) give the lessee permission to put the sign up on your behalf. The better practice, however, is for you to put the sign up yourself. It is also important to regularly maintain the sign so that the language is clear and visible to all those who may pass by your property.

Keep vigilant about the use of your property. Before posting any "right to pass by permission" sign, be sure to check your local city and county ordinances regarding the placement of signs on private property.

For more information, please contact your Bullivant real estate attorney.