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Easement by necessity? Not if the federal government has anything to do with it.

By Ronald L. Richman

In a recent case, the California Court of Appeal held that even if a parcel of land is landlocked and there is no access to the "outside world" without borrowing, begging or stealing (hopefully not) a portion of a neighboring property, an "easement by necessity" does not arise by operation of law if somewhere in the chain of title, the landlocked parcel was *patent deeded* by the federal government to the landlocked property owner's predecessors. Murphy v. Burch (2007) 156 Cal. App. 4th 1434.

Easement by Necessity

An easement is a right to use the property of another. An *easement by necessity* is an easement that is created when the owner of a landlocked parcel has no access to a public right of way such as a street or highway. An easement by necessity arises by operation of law only if two strict conditions are met: (1) there is a strict necessity for the right-of-way such as owning a landlocked parcel with no access to a public right of way; and (2) at one time, the landlocked parcel and the parcel over which the right-of-way is sought, were owned by the same person(s). The exception to this rule is where the landlocked parcel was *patent deeded* by the federal government to the current owner or to his or her predecessor in the chain of title.

A patent deed arises when federally owned land is deeded to a private owner. In the case of a patent deed, when the federal government still owned the property, even if the property was landlocked, the federal government could not acquire an easement by necessity. Why? Because it was not necessary. The federal government had the right of eminent domain which is the right to acquire property for public use. The courts held that the federal government, having the right of eminent domain, had no need for and therefore had no right to acquire an easement by necessity. Because the federal government could not acquire an easement by necessity when it patent deeded a landlocked parcel to a private owner, the federal government had no easement by necessity to convey to the private owner.

And, no matter how many times the landlocked parcel is re-sold from private owner to private owner, the landlocked parcel remains just that, a landlocked parcel without an easement by necessity for a public right of way. How then will the landlocked owner gain access to the public right of way? The power of negotiation (or friendship). Means to acquire passage can include a license [paid right] to use the neighboring property or the purchase of an easement from the owner of the neighboring property.

Moral of the story - always review a title report prior to purchasing any property, including a landlocked property, in order to understand what easements do and do not exist.

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