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Homeowners' CC&Rs can provide an exclusive easement over a private roadway on a landlocked parcel

By Ronald L. Richman

The California Court of Appeal again recognized the rare right to an *exclusive easement* when the exclusive easement is limited to a very small and defined portion of the property subject to the easement and there is a compelling reason for such exclusive use. Gray v. McCormick (2008) ---Cal. Rptr.3d. ---.

In general terms, an easement is the right to use the land of another as opposed to acquiring an ownership interest in the land of another. An easement is defined as: "a restricted right to specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership." An exclusive easement is the exclusive right of one party to use the property of another, to the exclusion of everyone else. Exclusive easements are very rare because an easement, by its very nature, is a shared right over another person's property. An exclusive easement is about as close as you can get to an ownership interest in the property of another.

In Gray, the Grays and the McCormicks own multi-acre neighboring properties in a subdivision of multi-million dollar homes. The properties are part of a homeowners' association. The "Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Coto de Caza" ("CC&Rs") provide the following: (1) various property owners have non-exclusive easements for foot traffic, horses and cars over certain private roadways; and (2) as to Lot 6 [owned by Grays], because it was landlocked and only accessible by a private roadway located on Lot 3 [owned by the McCormicks], Lot 6 had an exclusive easement over a small portion, 16 feet wide and 90 feet long, of the private roadway, barring anyone else from using that portion of the roadway so that access to Lot 6 would never be obstructed.

The McCormicks, who had been using the easement for passage of their horses and for the transportation of their horse feed, etc., to and from their stables, objected to the exclusive easement, arguing that California law does not allow for exclusive easements. The Court of Appeal disagreed, holding that there are rare circumstances in which the grant of an exclusive easement can be justified. The Court of Appeal offered the following examples of when an exclusive easement was granted over a small and defined portion of the property:

- Where an easement already existed for "parking and garage purposes" on neighboring lots, the owner of one of the lots, subject to the easement, was allowed to build and exclusively use a two-car garage within the easement because a shared parking garage would generate too many disputes between the neighbors;
- Where a water district acquired property and due to a mistake as to the property boundary lines, built a water reservoir on a neighboring property, the Court held that the water district was entitled to an exclusive easement over the reservoir to protect and preserve the reservoir from contamination; and
- Where a homeowner substantially improved a very small portion of land that turned out to be owned by his neighbor, the homeowner was granted an exclusive easement over the portion of his neighbor's property because of the cost and inconvenience to remove the substantial improvements (although the exclusive easement was to terminate upon the sale of the homeowner's property).

Exclusive easements will always be the exception to the general rule that an easement, by its very nature, is a shared right to use the property of another.

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