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## California Court Says Neighbor Has a License to Landscape, Forever

By Ronald L. Richman

***License to Landscape: A property owner's longstanding and substantial landscape improvements to a roadway easement on his neighbor's property results in an irrevocable license, granting him a permanent right to continue to improve and maintain the landscaping along the roadway easement.***

An *easement* is the right of one property owner to use a portion of his neighbor's property for a limited purpose. Often, as a condition to allowing undeveloped properties to be developed into residential communities, a county or other state/local agency will require certain portions of land to be set aside for roadway easements so that the property owners can access their respective properties. The owner of the property on which the roadway easement is located is required to allow his or her neighbors to use the roadway easement. Those using the roadway easement must not otherwise interfere with the use of the property on which the easement is located.

A *license* is different from an easement. A license exists when a property owner gives permission to another to use his or her property. The owner granting the license can generally revoke the license at any time, for whatever reason. In addition, when the owner granting the license sells his or her property, the license is automatically revoked. However, a license may become *irrevocable* when the owner knowingly permits his neighbor to improve the owner's land, and the neighbor expends substantial time, effort, and money on the improvements and maintains them over a long period of time.

The California Court of Appeal in *Richardson v. Franc* (2015) 233 Cal. App. 4th 744 held that substantial landscape improvements and maintenance over a long period of time along a roadway easement, without objection by the owner of the property on which the easement was located, gave rise to an irrevocable license to continue to maintain and improve the landscaping.

In *Richardson*, the Richardson property is adjacent to the Franc property. A roadway easement exists over a portion of the Franc property. Starting in 1989, and before the Richardsons or Francs bought their properties, the prior owner of the Richardson property made substantial landscape improvements to the roadway easement at great cost over a ten year period. The improvements included an irrigation system, plants, shrubs, trees, water fixtures for fire safety and electrical lighting along the roadway. In addition, the prior owner regularly maintained the improvements.

The Richardsons purchased their property in 2000. The Richardsons continued to improve and maintain the landscaping along the roadway easement. The Francs purchased their property in 2004. The Francs were aware of the landscaping and maintenance of the roadway easement by the Richardsons as well as by their predecessors at the time of purchase.

In 2010, without warning, the Francs cut the irrigation lines and removed the electrical lighting along the roadway easement. The Francs then sent a letter to the Richardsons demanding the removal of all the landscaping and improvements from the roadway easement. In response, the Richardsons sued the Francs seeking, among other remedies, an irrevocable license to keep and maintain the landscaping, irrigation, lighting and other systems supporting the landscaping.

After trial, the court granted the Richardsons, and any future owner of the Richardson property, an *irrevocable license* to continue to improve and maintain the landscaping along the roadway easement. The trial court decided it would be unfair to require destruction of the landscaping in

light of the considerable time, effort and expense put into the improvements and maintenance over the years, without the Francs' objection.

The Francs appealed. The California Court of Appeal agreed with the trial court and upheld the grant of the irrevocable license. It reasoned that while a license to use another's property is generally revocable:

...a license may become irrevocable when a landowner knowingly permits another to repeatedly perform acts on his or her land, and the licensee, in reasonable reliance on the continuation of the license, has expended time and a substantial amount of money on improvements with the licensor's knowledge. Under such circumstances, it would be inequitable to terminate the license.

It held that when a property owner is given a license, either orally or in writing, to enter the land of his or her neighbor and thereafter expends a substantial amount of time, effort and money to improve and maintain a portion of the neighbor's land, the license becomes irrevocable and gives that property owner and all future owners of his or her property an irrevocable right to continue to improve and maintain that portion of the neighbor's property.

A license is a contract. In order to avoid a later dispute over the terms, conditions, and duration of the license, the property owner granting the license should reduce the license to writing, specifying the terms, conditions, and duration of the license. The written license agreement should be signed and dated by all involved parties.

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