GENERAL ALASKA EASEMENT LAW

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The following cases have been summarized to provide basic easement concepts. These summaries are solely for the purpose of identifying the cases and the issues. As with any case, the application of the law applies to the particular facts of each case. Please consult your own attorney in determining the applicability and accuracy of the summaries as they apply to your individual requirements.

1. Freightways Terminal Company, v. Industrial and Commercial Construction, Inc., 381 P.2d 977 (1963).

This case involved creation of an easement by implication and estoppel. It also defines the term easement and addresses several of the legal principals of easements.

Easement Defined: "[E]asement is the right which the owner of one parcel of land has by reason of such ownership to use the land of another for a specific purpose, such use being distinct from the occupation and enjoyment of the land itself." At 982. The property subject to the easement is the servient tenement and the land enjoying the use of the easement is the dominant tenement. At 982. The servient and dominant estates or tenements do not have to be contiguous or adjoining. At 983.

A person cannot have an easement across his own property; however, the Court recognizes the theory of "quasi easement" whereby one part of the property is used for the benefit of another part of the property.

Implied Easement: If there is a severance of a property and at the time of the severance there was a use of one portion of the property for another (quasi easement) then an easement may be created by implication. At the time of the severance the use must be apparent, continuous and necessary. Essentially there must be a visible, existing continuous use at the time the property is subdivided.

Since creation of an easement by implication only applies when a conveyance is silent as to an easement interest, the general rule is implied easements are not favored. Creation of an implied easement across land conveyed to the grantee in favor of the grantor is deemed an implied reservation; one in favor of the grantee across the grantor's land is an implied grant.

The degree to which the implication of an easement is necessary for the owner's use and enjoyment of the property ranges from strictly necessary (there is no other alternative) to mere convenience of use. Some courts make a distinction about the degree of necessity required to imply an easement based on whether it is an implied grant or reservation, with the greater burden on the grantor to prove a reservation. The rule of necessity in Alaska "is whether the easement is reasonably necessary for the beneficial enjoyment of the property as it existed when the severance was made, regardless of whether the easement is one of implied grant or of implied reservation." At 984.

Estoppel: An easement may be created by an oral grant and improvements made by the grantee. This is typically referred to as the doctrine of part performance, but is essentially creation by estoppel.

2. Wessells v. State Department of Highways, 562 P.2d 1042 (1977).

Wessells, an assignee, had a lease from the State of Alaska, Division of Land, (ADL), which contained a paragraph reserving the right to grant an easement or right of way across the leased property. The lessee would be entitled to compensation for any improvements or crops subject to the right of way grant. The entire leasehold was necessary for the right of way and was conveyed to the Department of Highways, (DOH), by an interagency land management transfer (ILMT). DOH contended its only obligation was to pay Wessells for improvements.

Right of Way Defined: "A 'right-of-way' is generally considered to be a class of easement." Footnote 5, page 1046.

"Reserves the right to grant": ADL reserved the right to grant easements or rights of way in the lease. The Court determined that language was ambiguous. Wessells argued that technically a grant is a conveyance to a third party. An ILMT is not a grant but a transfer of management authority within the state. The state argued that a transfer from ADL to DOH reasonably constituted a grant since the two agencies have very specific and different statutory authorities. The Court construed the language to reflect what it believed was the reasonable expectation of the parties. In this case the Court found that the right to grant an easement to another entity of the state was a reasonable interpretation of the lease.

Scope of Easement: The state argued that the terms easement and rights-of-way created an unlimited easement which could in effect terminate the entire estate. In this instance use of the entire 12 acre tract was not deemed

reasonable. The court reasoned that 100 feet was a typical highway width due to the 100 feet dimensions listed in AS 19.10.015 and 19.10.010 even though neither specifically applied in this case.

In determining the scope of the easement the Court discussed the rules of construction and the doctrine of unlimited use. As a general rule ambiguities are to be construed against the lessor and the drafter of the instrument. Also, ambiguous lease provisions should be interpreted to permit the continued performance of the lease. On the other hand, in construing the terms of an unspecified easement according to the doctrine of unlimited reasonable use the court stated in footnote 29, page 1050:

> Where an ambiguity surrounds the word "easement," the doctrine of "unlimited reasonable use" may be at odds with extrinsic evidence or other rules of construction, such as resolving ambiguities against the drafter. While we agree with the general policy behind the unlimited reasonable use doctrine, we will not blindly apply the doctrine and ignore other rules of construction or extrinsic evidence which show that unlimited reasonable use is not a reasonable expectation of the parties. The doctrine of unlimited reasonable use is but one factor to be considered.

Consequently the Court has indicated that it will use the doctrine of unlimited reasonable use as one of the factors it will use in determining the scope of use of an easement.

3. Swift v. Kniffen, 706 P.2d 296 (1985).

Several owners of property in a subdivision filed suit against the subdivider claiming a roadway easement. The claims were based on the theories of common law dedication, estoppel, private prescriptive easement, and public prescriptive easement.

Common Law Dedication: Implied dedication requires (1) an intent to dedicate the road or easement to a public use, and (2) an acceptance of that dedication on behalf of the public. Filing of a preliminary plat showing a roadway did not establish an intent to dedicate when that plat was subsequently rejected. Acquiescence in the public's use of a roadway is not sufficient proof of intent to dedicate, some affirmative acts of dedication by the owner must be shown.

Estoppel: "[A] private easement is created by estoppel only upon a showing of an oral grant and detrimental reliance." At 301. "[E]stoppel may be the basis for finding an implied intent to dedicate property for a public use..." At 301. If the

claimant can show detrimental reliance by the public along with an oral grant then estoppel will apply.

Prescriptive Easement: Citing Dillingham Commercial Co. v. City of Dillingham and Alaska National Bank v. Linck, 559 P.2d 1049, 1052 (1977), at page 302 the Court found that:

> [t]o establish a claim for prescriptive easement, a claimant must show essentially the same elements as for adverse possession. ...the three basic requirements for adverse possession...: (1) the possession must have been continuous and uninterrupted; (2) the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and (3) the possession must have been reasonably visible to the record owner. The main purpose of these requirements is to put the record owner on notice of the existence of an adverse claimant.

One of the prescriptive easement issues was the continuity of use. The court found that failure to plow a road during a Fairbanks winter was not sufficient to show either abandonment or non-use. At 303.

Due to a lack of factual findings by the lower court the Supreme Court remanded the case on the issues of private and public prescriptive easements, but reaffirmed the right to establish a public easement by prescription.

4. Laughlin v. Everhart, 678 P.2d 926 (1984)

An owner's failure to properly subdivide a property does not constitute an implied dedication. The case also dealt with implied easements, it cites Freightways Terminal Co.

The owner of dominant tenement may be the holder of implied easement. The dominant estate owner may subdivide the dominant estate and use the implied easement for access. However, only those properties that were a part of the original dominant estate are entitled to use the easement. The owner of the dominant estate cannot convey his rights to benefit another property that is not part of the dominant estate.

5. Demoski v. New, 737 P.2d 780 (1987)

This is a sister case to the Laughlin case. It affirms the law of implied easements. However, even if the elements of an implied easement exist, there

will not be an implied easement where the parties intend that such an easement does not exist. A section line easement was sufficient to prevent easement by necessity where there was no showing that beneficial use of the property was for subdivision purposes.

The casual use by hunters and sight-seers in this case was insufficient to create public road by implied dedication.

6. Methonen v. Stone, 941 P.2d 1248 (1997)

Methonen purchased lot 10 which had a well house and water lines running from it to other lots in the subdivision. The subdivision plat noted the location of the wellhouse but did not delineate easements to other lots in the subdivision. Methonen took title subject to "well site as delineated on the subdivision plat, but the deed did identify any obligation to supply water to other lots or reserve or except easements for the water lines to the other properties. At the time Methonen purchased the property there was a prior unrecorded water agreement under with the prior owner of lot 10 had agreed to provide water to the other lots. That agreement was recorded 9 years after Methonen bought the property. The water lines were visible at the time Methonen purchased the property and testimony indicated he discussed the water lines with the real estate agent but was lead to believe he did not need to maintain the system or provide anyone water. Methonen shut off the water the neighbors sued.

The Supreme Court ruled that neither the language making the property subject to the well site or the subdivision plat created an easement stating:

> It is well established that the intention to create a servitude must be clear on the face of an instrument; ambiguities are resolved in favor of use of land free of easements. Neither the Ostrosky deed to Methonen nor the subdivision plat identifies an easement for a community water system based on the well located on Lot 10. Neither document indicates that the owner of Lot 10 is obligated to supply water to any of the remaining subdivision lots. In short, these documents did not provide either actual or constructive notice to Methonen of the existence of a community water system agreement at the time he purchased Lot 10 in 1976. [Citations omitted.]

Methonen also claimed bona fide purchaser status under the recording laws arguing the unrecorded water agreement was invalid against him since he did not have actual notice.[1] The Court noted Alaska's recording statute specifies actual

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[1] AS 40.17.080:

notice but construed actual notice to include constructive notice (presumed knowledge of a properly recorded document) as well as the common law doctrines of implied easement and inquiry notice. In its decision to remand the case to the trial court the Supreme Court denied Methonen's arguments by finding:

> Methonen's knowledge of the well, and even his actual or constructive knowledge that a well was depicted on the subdivision plat, or that a well site was referred to in his deed from Ostrosky, technically is not "actual notice" of an easement. However, courts have construed the actual notice exception in state recording statutes to incorporate common law theories of constructive notice. Legislative enactments are presumed not to abrogate the common law, except where the intent to do so is manifest. We therefore conclude that a purchaser is bound by an unrecorded easement under AS 40.17.080's actual notice provision when it would be valid against him under the common law doctrines of implied easement or inquiry notice.
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> It is well established that a purchaser will be charged with notice of an interest adverse to his title when he is aware of facts which would lead a reasonably prudent person to a course of investigation which, properly executed, would lead to knowledge of the servitude. The purchaser is considered apprised of those facts obvious from an inspection of the property.
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> If a purchaser or incumbrancer, dealing concerning property of which the record title appears to be complete and perfect, has information of extraneous facts, or matters in pais, sufficient to put him on inquiry respecting some unrecorded conveyance, mortgage, or incumbrance, or respecting some outstanding interest, claim, or right which is not the subject of record, and he omits to make proper inquiry, he will be charged with constructive notice of all the

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Effect of recording on title and rights; constructive notice. (a) Subject to (c) and (d) of this section, from the time a document is recorded in the records of the recording district in which land affected by it is located, the recorded document is constructive notice of the contents of the document to subsequent purchasers and holders of a security interest in the same property or a part of the property.

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

> facts which he might have learned by means of a due and reasonable inquiry.
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> . . . .
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> Generally, a proper investigation will include a request for information from those reasonably believed to hold an adverse interest. Should these sources mislead, the purchaser is not bound. Reliance on the statements of the vendor, or anyone who has motive to mislead, is not sufficient.
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> [Citations Omitted.]

On the matter of implied easement the Supreme Court held:

> An easement will be implied upon the severance of an estate when the use made of the servient parcel is manifest, continuous and reasonably necessary to the enjoyment of the dominant parcel.
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> . . . .
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> Once an easement is implied, it runs with the land and is enforceable against subsequent purchasers of the servient estate so long as it retains its continuous and apparent nature and remains reasonably necessary to the enjoyment of the dominant estate.
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> [Citations omitted.]