



RESTRICTIONS AND ENCUMBRANCES

artiacademics.com

ARTI® and the ARTI Logo are registered service marks owned by Brokers Technology LLC and licensed to ARTI® Academics. All rights reserved.

CONCEPTS & DEFINITIONS

- LIEN

A lien represents a legal right or interest that a creditor holds over a property as security for the repayment of a debt owed by the property owner. It serves as a form of protection for the creditor, ensuring that they have recourse to recover their debt through legal means if the debtor fails to fulfill their financial obligations. Understanding the nature and implications of liens is crucial in real estate transactions to ensure transparency and mitigate potential risks for all parties involved.

- LIEN PRIORITY

Lien priority refers to the order in which different liens or claims against a property are paid off if the property is sold or foreclosed upon. Essentially, it determines who gets paid first and who has secondary rights to the proceeds from the sale. Liens with higher priority are paid off before those with lower priority. Priority is typically based on factors such as the date the lien was recorded, the type of lien, and any specific laws governing lien priority in a particular jurisdiction.

- DEED RESTRICTION

A deed restriction is a set of rules or limitations attached to a property's deed. These rules outline how the property can be used or developed. They cover things like building size, style, or even activities allowed on the property. Deed restrictions are put in place to maintain certain standards in a neighborhood or development. It's crucial for property buyers to understand these restrictions before purchasing a property to ensure they align with their plans and preferences.

- ENCUMBRANCE

Any claim, lien, restriction, or liability that affects the title to a property. Essentially, it's anything that limits the owner's ability to use or transfer the property freely. Encumbrances can include mortgages, easements, unpaid taxes, or deed restrictions. Understanding encumbrances is crucial in real estate transactions as they can impact property ownership rights and obligations.

- SPECIFIC LIEN

A specific lien is a legal claim against a particular property to secure the repayment of a specific debt or obligation. Unlike general liens, which can attach to all of a debtor's assets, specific liens are tied to a specific property.

- GENERAL LIEN

A general lien is a legal claim against all of a debtor's assets, rather than just a specific property. It gives the creditor the right to seize any of the debtor's property to satisfy the debt, not just a particular item.

- JUDGMENT LIEN

A judgment lien is a legal claim placed on a person's property by a creditor to secure payment of a debt resulting from a court judgment. This type of lien is typically imposed when a debtor fails to repay a financial obligation, and the creditor successfully sues them in court. Once the judgment is issued, the creditor can place a lien on the debtor's property, which may include real estate, personal property, or financial accounts. The lien ensures that if the debtor sells the property or has other assets, the creditor can be paid from the proceeds of the sale.

- ENCROACHMENT

Encroachment is when a structure or improvement on one person's property extends beyond the property line and onto the land of another person. Encroachments can cause legal disputes between property owners and may need to be resolved through negotiation, legal action, or by obtaining an easement.

CONCEPTS & DEFINITIONS

- RESTRICTIVE COVENANTS (CC&RS)

Restrictive covenants are legally binding agreements that are written into a property's deed or governing documents (covenants, codes & restrictions). These agreements impose certain conditions or limitations on how the property can be used or developed. Restrictive covenants are typically established by property developers or homeowners' associations to maintain specific standards or preserve the character of a neighborhood or community.

- HOA (HOMEOWNERS ASSOCIATION)

An HOA, or Homeowners Association, is an organization established within a residential community or development to manage and enforce certain rules, regulations, and standards for the properties and common areas within that community. Homeowners within the community automatically become members of the HOA upon purchasing a property and are typically required to pay regular fees or assessments to cover the costs of maintaining shared amenities, landscaping, and other communal services.

- EASEMENT

An easement is a legal right that allows someone to use another person's property for a specific purpose, even though they don't own the property. It grants certain privileges such as the right to pass through or access the property for utilities, maintenance, or other designated purposes. Easements can be granted by property owners voluntarily or can be established by law or court order.

- APPURTENANT EASEMENT

An appurtenant easement is a legal right that benefits one parcel of land (the dominant tenement) and burdens another parcel of land (the servient tenement). This type of easement is typically attached to the land itself rather than to a specific individual. It allows the owner of the dominant tenement to use a portion of the servient tenement for a specific purpose, such as access, utilities, or drainage.

- DOMINANT TENEMENT

A dominant tenement is a piece of property that benefits from an easement or other property right. In the context of easements, it refers to the land that has the right to use another property (the servient tenement) for a specific purpose, such as access, utilities, or drainage.

- SERVIENT TENEMENT

A servient tenement is a property that is burdened by an easement or other property right in favor of another property (the dominant tenement). This means that the owner of the servient tenement must allow the owner of the dominant tenement to use a portion of their property for a specific purpose, such as access, utilities, or drainage.

- PARTY WALL EASEMENT

A party wall easement is a legal arrangement that allows two adjacent property owners to share and maintain a common wall or structure that straddles the boundary line between their properties. This type of easement grants both owners the right to use and access the wall for support and maintenance purposes.

CONCEPTS & DEFINITIONS

- **LANDLOCKED**

In real estate, “landlocked” refers to a piece of property that has no direct access to a public road or street. This means the owner of the landlocked property cannot reach their land without crossing someone else’s property. Being landlocked can create significant challenges for property owners, as it limits access for things like transportation, utilities, and emergency services.

- **EASEMENT BY NECESSITY**

An easement by necessity is a legal right that allows a property owner to access their property over another person’s land when there is no other reasonable way to access it. This type of easement arises out of necessity due to the property’s landlocked or isolated condition. It grants the owner of the landlocked property the right to cross the neighboring property to reach a public road or other essential services. This is typically established by law to ensure that property owners have reasonable access to their land.

- **EASEMENT BY PRESCRIPTION**

Created when someone uses a portion of another person’s property openly, continuously, and without permission for a certain period of time, which is set by state law. In Utah, this period is typically 20 years. For example, if a neighbor has been using a path across your land to access their property for 20 years without your permission, and their use has been obvious and uninterrupted, they might gain a legal right to continue using that path.

- **INGRESS**

“Ingress” refers to the right or permission to enter a property. It specifically denotes the way or path used to access a piece of land or a building. Ingress is important because it ensures that property owners and their visitors have a legal and clear way to get onto the property.

- **EGRESS**

Egress refers to the right or permission to exit a property. It specifically denotes the way or path used to leave a piece of land or a building. Egress is important because it ensures that property owners and their visitors have a legal and safe way to leave the property.

- **EMINENT DOMAIN**

Eminent domain is the government’s legal power to take private property for public use. This can include building roads, schools, or other public facilities. When the government uses eminent domain, it must provide fair compensation to the property owner.

- **EASEMENT BY CONDEMNATION**

A legal process where the government or another entity with eminent domain power acquires an easement on private property for public use. This means they can create a right of way or access route across someone’s land for projects like utilities, roads, or pipelines. The property owner must be fairly compensated for this easement.

- **POLICE POWER**

Police Power refers to the authority of the government to regulate certain activities to protect the health, safety, and general welfare of the public within its jurisdiction. It’s like the rules parents set at home to keep everyone safe and happy, but on a bigger scale and enforced by the government.

CONCEPTS & DEFINITIONS

- COMMERCIAL EASEMENTS

Legal rights that allow businesses to use someone else's property for specific commercial purposes. These easements can include rights of way for access, installing utilities like water and power lines, or placing signs. They are designed to benefit commercial activities and are often agreed upon between property owners and businesses.

- EASEMENT CREATION

Easements are typically created with the deed through a title company and is recorded in that way. There are three ways to create easements: express, implied, and legal action.

- EASEMENT BY PRESCRIPTION

Created when someone uses a portion of another person's property openly, continuously, and without permission for a certain period of time, which is set by state law. In Utah, this period is typically 20 years. For example, if a neighbor has been using a path across your land to access their property for 20 years without your permission, and their use has been obvious and uninterrupted, they might gain a legal right to continue using that path.

- EXPRESS EASEMENT

A legal right to use someone else's property that is clearly written and agreed upon by all parties involved. It is created through a formal agreement, usually in the form of a deed or contract, which is then recorded in public records. This document outlines the specific use of the easement, such as a right of way for access or permission to install utilities.

- IMPLIED EASEMENT

This happens when an easement is not expressly stated but is implied by the existing use of the property. For example, if a property is divided, and the only access to the back portion is through the front portion, an easement might be implied.

- LEGAL ACTION EASEMENT

A legal action easement is an easement that is established or terminated through a court order. This usually happens when there is a dispute between property owners about the existence or use of an easement. A judge reviews the case and makes a decision based on the evidence and applicable laws. For example, if someone claims they have a right to use a path on another person's property, but the property owner disagrees, the court can determine whether an easement exists and specify its terms.

- TERMINATION OF AN EASEMENT

Easements can be terminated just as they can be created, in an express or implied manner. This can happen when the easement is no longer needed, no longer used, or released by the party that uses it. This agreement should be in writing and, if it was recorded when created it should be recorded when terminated.

- RIGHT TO USE

The right that landowners have to make a property productive. Such as building on the property, landscaping the property, mining the property, etc. These rights will be subject to local zoning limitations and whether the use is legal.
