

An individual who enjoyed paragliding lived next to a large parcel of undeveloped land. The individual secured oral permission from the owner of the undeveloped land to access a bluff on the land from which the individual could launch his paraglider. For 12 years, the individual crossed the owner's land with his paraglider to launch himself off the bluff, until a workplace injury permanently prevented him from doing so.

A year after his injury, the individual sold his residence. Although the individual told the purchaser about the right to access the bluff, neither the contract nor the deed made mention of it. Prior to this sale, the owner of the undeveloped land had sold it to a developer. The developer has since told the purchaser of the residence that she can no longer access the bluff.

The applicable jurisdiction requires that a use of a servient estate extend for at least 10 years before the user has a right to the use by prescription.

Can the developer legally prevent the purchaser of the residence from accessing the bluff?

- A. No, because the individual accessed the bluff for more than 10 years before the land was sold to the developer.
- B. No, because the individual had an easement appurtenant that passed automatically to the purchaser of the residence.
- C. Yes, because neither the contract of sale nor the deed for the residence mentioned a right of access.
- D. Yes, because the individual's access to the bluff was with the oral permission of the owner of the land.

Explanation:

Licenses, easements & profits

License Revocable privilege to enter & use another's land for specific purpose

Easement Nonpossessory interest in land that gives easement holder right to:
use another's land for specific purpose (ie, affirmative easement) *or*
prohibit other owner from doing something on land that owner would otherwise be allowed to do (ie, negative easement)

Profit Nonpossessory interest in land that gives profit holder right to enter another's land to remove products of soil (eg, timber, minerals, oil)

A **license** is a grant of permission to enter and make **specific, limited use of another's land** (the servient estate). Unlike easements, licenses are *not* interests in the land subject to the statute of frauds. As a result, they can be created orally or by another act demonstrating the licensor's intent to let the licensee enter the property. Licenses can generally be revoked at any time and **terminate automatically** upon either:

the death of either party *or*

conveyance of the servient estate.

Here, the owner (licensor) orally gave the individual (licensee) permission to access the bluff on the owner's land for paragliding. This created a license, which terminated automatically when the owner sold the land (servient estate) to the developer. Therefore, the developer can legally prevent the purchaser of the individual's residence from accessing the bluff.

(Choices A & B) An easement appurtenant is tied to the land and passes automatically to subsequent owners of the dominant (benefited) estate. Although easements are presumed to be appurtenant, there must first be an easement. Here, there was no writing to satisfy the statute of frauds, so no express easement was created. And though the individual accessed the bluff for more than 10 years (statutory period), he did not acquire an **easement by prescription** since he had the owner's *permission* to access the bluff.

(Choice C) Had there been an easement, the failure to mention the easement in either the contract of sale or the deed for the residence would not have prevented the easement from being transferred to the purchaser.

Educational objective:

A license is a grant of permission to enter and use another's land for a specific purpose. Licenses can be revoked at any time and terminate automatically upon the death of either party *or* conveyance of the servient estate.

References

Restatement of Property §§ 515, 519 (Am. Law Inst. 1944) (creation and revocation of licenses).

25 Am. Jur. 2d Easements and Licenses in Real Property § 109 (2020) (effect of conveyance of licensed property).

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