

# Understanding Rights to Shared Driveways and Paving the Way for Conflict Resolution

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We all know the popular phrase “good fences make good neighbors” – but what about shared driveways?

Much like fences, common driveways can be shared property with a few notable differences. When two or more individuals share a driveway, they likely have a basic understanding of what that entailed when they purchased their respective properties. Common or shared driveways are generally created for the purpose of benefitting particular adjoining properties. The persons sharing the driveway have the right to use it – but they also share the responsibility to maintain it for the shared benefit.

But what happens if circumstances change?

What if a neighbor decides to question the location of the shared driveway’s entrance or exact location?

What if one neighbor decides to impede access to the shared driveway entrance to the detriment of the other?

## Questions to Consider if a Shared Driveway is in Dispute

If an issue comes up regarding either use or the location of a shared driveway, there are several questions to consider:

**1 - What do the respective property owners’ title insurance policies and surveys say?**

The best first step is always to refer to the facts to determine what legal rights are in place. Each party should review their property owner's title insurance policy from when the property was purchased, and to the extent a survey was obtained of the property, it too should be reviewed. Both of these documents can be extremely helpful in determining each parties' legal rights. For example, there may be a recorded deed or separate driveway easement agreement, which typically will set forth the location and explain each parties' respective rights, duties, and obligations to use, repair and maintain the driveway. A recorded deed or separate driveway easement will give the easement holder the legal right to use and go onto another party's property for purposes of accessing their property. Easements typically do not have any time limitation, and a neighbor would be prevented from interfering with continued use and access.

If no recorded easement exists, the parties may still have legal rights and a cause of action to prevent any interference by the other owner. If each neighbor has independent surveys, they should be reviewed to determine if there are any discrepancies with the driveway relative to the property lines. If the surveys do not align with what was understood to be the common shared driveway location, a determination should be made on which survey is correct. This may require hiring a surveyor to review or draw up a new survey which all involved parties can agree to.

If a new survey does not provide a clear resolution, a Court action will be needed to determine which survey is correct.

## **2 – What are the options if no recorded deed or easement is found to be on the neighbor's property?**

If an easement does not exist and use of the driveway has been continuous by the prior and existing property owners, or is the only viable access to the property, a Court action may be necessary to stop any interference by the neighbor and to further establish a continued legal right to use the common driveway, together with establishing the parties' respective rights, obligations and duties for repairs and maintenance. Such legal actions are commonly referred to as claims for adverse possession or a prescriptive easement, both of which require a party to demonstrate years of usage and a necessity to

require continued use of the common driveway.

Alternatively, the neighbors may be able to mutually agree upon a written driveway easement agreement to be recorded in the public land records and avoid a court action. This alternative should require consulting with attorneys to properly negotiate and set forth, in writing, each parties' respective rights, obligations and duties for continued use, repairs and maintenance to avoid any future conflicts.

## **When Neighbors Cannot Agree, Legal Advice May Provide Resolution**

Nobody wants to be caught up in a dispute with their neighbors, but if an issue regarding a shared driveway becomes contentious, the best course of action is to consult with an attorney. There may be valid claims either against the neighbor to prevent any interference or impediment of a property owner's driveway access, and potentially against the title insurance company and/or surveyor, which would pave the way to a positive resolution.