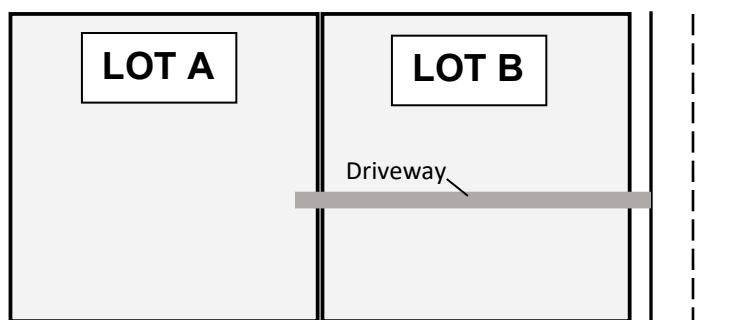




THE UNIFORM EASEMENT RELOCATION ACT

- A Summary -

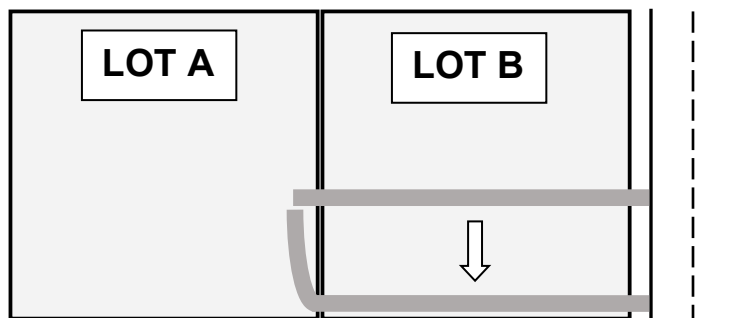
An easement is an interest in real property that gives the easement holder the right to use another person's land. For example, think of two neighboring lots: A and B. Lot B is adjacent to a public highway, but Lot A has no access to the road. The owners of the two lots could negotiate an agreement for the owner of Lot A to construct a driveway across Lot B, connecting Lot A to the road. If the agreement is formalized and recorded in public land records, we would say that the owner of Lot A holds an *easement* allowing access to the property via the driveway across Lot B.



An easement is legally tied to the property, not to the current owner. If either lot is transferred to a new owner, Lot A can still be accessed via the easement across Lot B. Thus, easements can endure for many years, even as the character and use of the properties change.

Easement Relocation

Now, consider what could happen if the owner of Lot B wants to develop the property. The easement allowing access to Lot A might restrict the development options. The owner of Lot B might prefer to relocate Lot A's driveway to another part of the property in order to create a larger area for development, as shown here:



In this situation, what rights does the easement holder have?

Under the traditional law of most states, an easement can be relocated only with the consent of both parties – the easement holder and the owner of the property burdened by the easement. But this power can be abused. In our example, the owner of Lot A could prevent the development of

Lot B by withholding consent to relocate the driveway, even if the relocation had no major effect on Lot A's access to the public road. In some cases, easement holders have used this power to demand a payment before consenting to a relocation.

Modernizing the Law

The Uniform Easement Relocation Act (UERA) modifies the rule requiring mutual consent for easement relocation. If the parties cannot agree, the UERA allows the owner of the burdened property (Lot B in our example) to get permission from a court to relocate an easement. The burdened property owner must provide advance notice of the relocation plan to all parties who own an interest in the property served by the easement (Lot A), and any of them may object to the relocation in court.

Before the court allows easement relocation, the burdened property owner must show that the relocation would not materially:

- reduce the usefulness of the easement,
- impose a burden on the easement holder,
- impair a purpose for which the easement was created,
- impair the safety of anyone using the easement, or
- reduce the value of the easement holder's property.

In addition, the burdened property owner must pay all the expenses of relocation and ensure that the easement holder's access is not disrupted during construction.

Certain exceptions apply: the UERA does not allow relocation of easements held by public utilities, or easements that restrict development, such as conservation easements and negative easements.

Conclusion

The Uniform Easement Relocation Act corrects an imbalance of power that allows easement holders to unreasonably restrict development of another person's property. The act provides an alternative procedure for court-ordered easement relocation as a safety valve in case the owners of the properties affected by the easement cannot agree to terms. Enacting the UERA will encourage flexibility and cooperation between property owners and protect the property rights of both easement holders and the owners of land subject to an easement.

For more information about the Uniform Easement Relocation Act, please contact Jane Sternecky, ULC Legislative Counsel, at (312) 450-6622 or jsternecky@uniformlaws.org.