

Easements: From Acquisition to Termination

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- Texas case law has defined what an easement is: a non-possessory interest in another's property that authorizes the holder to use that property for a particular purpose. *Killiam Ranch Props., Ltd. v. Webb Cty.*, 376 S.W.3d 146, 155 (Tex.App.-San Antonio 2012, pet. denied) (citing *Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002)).

What is an
easement?

Easements come in two types:
gross easements and
appurtenant easements.

Gross easement is a right over
use of your property held by a
specific individual.

Appurtenant easements are a
right over use of your property
for the benefit of adjoining lands.

Gross easements give a right over
use of your property to those
adjoining lands no matter who
owns them.

Gross
or
Appurtenant

Easements fall into two
categories, affirmative and
negative.

An affirmative easement is the
most common and allows its
holder to do something on
another individual's land, such as
cross over it.

Negative easements prevent
something from occurring on a
person's land.

Affirmative
or
Negative

- An easement does not convey the property itself. *Lakeside Launches, Inc. v. Austin Yacht Club, Inc.*, 750 S.W.2d 868, 871 (Tex. App.—Austin 1988, writ denied).

- Except in specific instances, the grant of the easement is to be in writing. *Holden v. Weidenfeller*, 929 S.W.3d 124, 131 (Tex.App.—San Antonio 1996, writ denied); *Machala v. Weems*, 56 S.W.3d 748, 757 (Tex. App.—Texarkana 2001, no pet.).

- The equitable exception to the “in writing” requirement is in easements by estoppel. *McClung v. Ayers*, 352 S.W.3d 723, 727 (Tex. App—Texarkana 2011, no pet.); *Cleaver v. Cundiff*, 203 S.W.3d 373, 375 (Tex. App.—Eastland 2006, no pet).

- Under this doctrine, a landowner may be estopped from denying the existence of an easement created by “representations” upon which another has detrimentally relied. *Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d 196, 209 (Tex.1963).

Three requirements to prove an easement by estoppel:

1) there was a representation communicated, either by word or action, to the one claiming the easement;

2) the easement holder believed the communication; and

3) the easement holder relied on the communication to his detriment.

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