

CV920 “Easement” Defined.

An “easement” is a right to use or control land owned by another person for a specific limited purpose (such as to cross it for access [or insert other example]). An easement prohibits the landowner from interfering with the uses authorized by the easement.

[An express easement is an easement that the landowner grants to someone else in writing, such as in a contract or a deed.]

References

Black’s Law Dictionary (Abridged 7th ed.).

Committee Notes

The parties may include in the parenthetical a description of additional or other particular uses more specific to the facts of the case. Depending on the easement at issue, the easement may include an area above or below the surface of the land.

If there are additional types of easements, the jury may be instructed according to the particular easement. By including these instructions, the Committee does not intend to take a position on the question of whether a right to a jury trial exists for any particular easement claim.

CV921 Prescriptive Easement. Introduction.

A prescriptive easement is a legal right to continue to use property of another based on longstanding use.

References

Valcarce v. Fitzgerald, 961 P.2d 305, 311 (Utah 1998) (prescriptive easement).

CV922 Prescriptive Easement. Elements of a claim.

[Plaintiff] claims a prescriptive easement to continue to use [Defendant’s] property in the following manner: [describe the particular use]. To establish this prescriptive easement, [Plaintiff] must prove by clear and convincing evidence for at least 20 years that:

1. [Plaintiff] has continuously used [Defendant’s] property for [describe the particular use];
2. [Plaintiff’s] use of [Defendant’s] property in this manner was open and notorious; and
3. [Plaintiff’s] use of [Defendant’s] property in this manner was adverse.

If you find that [Plaintiff] has proved each of these elements by clear and convincing evidence, then [Plaintiff] is entitled to a prescriptive easement to continue using [Defendant's] property for [describe the particular use].

References

M.N.V. Holdings LC v. 200 South LLC, 2021 UT App 76, ¶9, 494 P.3d 402.

Judd v. Bowen, 2017 UT App 56, ¶ 10, 397 P.3d 686, 692.

Valcarce v. Fitzgerald, 961 P.2d 305, 311 (Utah 1998).

Committee Notes

For the definition of clear and convincing, *see* CV118.

CV923 Prescriptive Easement. “Continuous” Defined.

[Plaintiff's] use of [Defendant's] property was continuous if [Plaintiff] used [Defendant's] property as often as required by the nature of the use and [Plaintiff's] needs, for an uninterrupted period of at least twenty years.

A prescriptive use is not continuous where, sometime during the twenty-year period:

- (1) [Plaintiff] stops using [Defendant's] property;
- (2) [Defendant] [or a previous owner of [Defendant's] property] prevents [Plaintiff] from using the property; or
- (3) [Plaintiff] accepts permission from [Defendant] [or a previous owner of [Defendant's] property] to continue using the property.

References

SRB Inv. Co., Ltd v. Spencer, 2020 UT 23, 463 P.3d 654.

Harrison v. SPAH Family Ltd., 2020 UT 22, ¶¶ 31, 41-43, 466 P.3d 107, 116-17.

Valcarce v. Fitzgerald, 961 P.2d 305, 311 (Utah 1998).

Marchant v. Park City, 788 P.2d 520, 524 (Utah 1990).

Lunt v. Kitchens, 260 P.2d 535, 537 (Utah 1953).

Zollinger v. Frank, 175 P.2d 714, 716 (Utah 1946).

Jensen v. Gerrard, 39 P.2d 1070, 1073 (Utah 1935).

M.N.V. Holdings LC v. 200 South LLC, 2021 UT App 76, ¶¶ 14-15, 494 P.3d 402, 407-08.

Judd v. Bowen, 2017 UT App 56, ¶ 16, 397 P.3d 686, 693.

Jacob v. Bate, 2015 UT App 206, ¶ 27, 358 P.3d 346, 355.

CV924 Prescriptive Easement. “Open and Notorious” Defined.

[Plaintiff's] use of [Defendant's] property was “open and notorious” if [Defendant]

knew about the use, or if [Defendant] could have learned about the use through the exercise of reasonable diligence.

“Notorious” in this context does not mean a criminal act or some wrongdoing, but only that the use of the easement was carried out openly (that is, with notoriety) so that any person familiar with the property would be aware that the easement is being used.

References

Judd v. Bowen, 2017 UT App 56, ¶ 22, 397 P.3d 686, 694.

Lunt v. Kitchens, 260 P.2d 535, 537 (Utah 1953).

Jensen v. Gerrard, 39 P.2d 1070, 1072 (1935).

David A. Thomas & James H. Backman on Utah Real Property Law, Easement by Necessity, § 12.02(b)(2)(ii), at 341 (ed. 2021).

<https://propertyrights.utah.gov/find-the-law/legal-topics/easements/>

CV925 Prescriptive Easement. “Adverse” Defined.

[Plaintiff’s] use of [Defendant’s] property was “adverse” if [Plaintiff] did not obtain permission for the use.

References

Harrison v. SPAH Family Ltd., 2020 UT 22, ¶¶31-32 n.16, 39-40, 466 P.3d 107, 114-16.

Zollinger v. Frank, 175 P.2d 714, 716 (Utah 1946).

Judd v. Bowen, 2017 UT App 56, ¶ 25, 397 P.3d 686, 695.

Jacob v. Bate, 2015 UT App 206, ¶ 18, 358 P.3d 346, 353.

CV926A Adverse Presumption.

If you find [Plaintiff’s] open and notorious use of [Defendant’s] property continued for a period of twenty years, then you must presume that the use was adverse.

References

Harrison v. SPAH Family Ltd., 2020 UT 22, ¶¶31-32 n.16, 51, 466 P.3d 107, 114-15, 118.

Valcarce v. Fitzgerald, 961 P.2d 305, 311-12 (Utah 1998).

Zollinger v. Frank, 175 P.2d 714, 716 (Utah 1946).

Jacob v. Bate, 2015 UT App 206, ¶¶ 18-19, 358 P.3d 346, 353.

CV926B Overcoming Adverse Presumption.

[Defendant] may overcome the adverse presumption in one of two ways.

- First, [Defendant] can prove that [Plaintiff] used the property with [Defendant’s]

- permission when [Plaintiff] first began using the property; or,
- Second, [Defendant] can prove that within the twenty-year period [Defendant] gave permission to [Plaintiff] to use the property and [Plaintiff's] use thereafter was within the scope of [Defendant's] permission.

If [Defendant] successfully proves by a preponderance of the evidence either of the above, then the burden shifts back to [Plaintiff] to prove that [Plaintiff's] use became adverse at some point thereafter for the twenty-year period.

References

Harrison v. SPAH Family Ltd., 2020 UT 22, ¶¶31-32 n.16, 51, 466 P.3d 107, 118.
Valcarce v. Fitzgerald, 961 P.2d 305, 311-12 (Utah 1998).
Zollinger v. Frank, 175 P.2d 714, 716 (Utah 1946).
Jacob v. Bate, 2015 UT App 206, ¶¶ 18-19, 358 P.3d 346, 353.

Committee Notes

Since cases do not specifically state the standard of proof for rebuttal, the Committee presumes the applicable standard is preponderance of the evidence.