

CV940 Easement by Implication. Introduction.

An easement by implication is an easement that can arise when a landowner divides property into two or more pieces ([Parcel A] and [Parcel B]) and transfers [Parcel B] away. The transfer of [Parcel B] to the new landowner may include by implication all those apparent, obvious, and visible easements over [Parcel A] which were used by the original landowner for the benefit of [Parcel B] before it was transferred.

References

Tschaggeny v. Union Pac. Land Resources Corp., 555 P.2d 277, 280 (Utah 1976).

Bridge BLOQ NAC LLC v. Sorf, 2019 UT App 132, ¶ 24, 447 P.3d 1278, 1282.

Committee Notes

The Committee notes that the Utah Supreme Court in *Tschaggeny* used both “apparent or visible easements” and “apparent, obvious, and visible” in defining an implied easement. In light of the ambiguity, the Committee chose to use the more recent formulation from the *Sorf* case.

CV941 Easement by Implication. Elements.

To succeed on this claim, [Plaintiff] must prove by clear and convincing evidence each of the following elements:

- (1) All of the property was once owned by a single landowner who then divided the land and transferred away one tract of land;
- (2) At the time the property was divided, the use giving rise to the easement [across/on] the [retained/transferred] parcel for the benefit of the [transferred/retained] parcel was apparent, obvious, and visible;
- (3) The easement is reasonably necessary to the enjoyment of the [transferred/retained] property; and
- (4) The use giving rise to the easement was continuous rather than sporadic.

References

Bridge BLOQ NAC LLC v. Sorf, 2019 UT App 132, ¶ 24, 447 P.3d 1278, 1282.

Committee Notes

To make the instructions more understandable for jurors, the Committee uses the terms “transferred” and “retained” in place of “dominant” and “servient,” respectively. In most cases, the easement would be on or across the retained parcel for the benefit of the transferred parcel, but it is conceivable that there are circumstances when the reverse could be true. Thus, those terms are placed in brackets. The parties may need to modify

the fourth element depending on the factual circumstances of the case to elaborate on the meaning of the term “continuous.”

Regarding element (2), *see* CV940 Committee Notes.