

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 [unreasonably](#) 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.).

[Metro. Water Dist. of Salt Lake & Sandy v. SHCH Alaska Tr., 2019 UT 62, para. 49, 452 P.3d 1158.](#)
[Wykoff v. Barton, 646 P.2d 756 \(Utah 1982\).](#)

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.

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 [that](#), 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, para. 9, 494 P.3d 402.

Judd v. Bowen, 2017 UT App 56, para. 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, paras. 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, paras. 14-15, 494 P.3d 402, 407-08.
Judd v. Bowen, 2017 UT App 56, para. 16, 397 P.3d 686, 693.
Jacob v. Bate, 2015 UT App 206, para. 27, 358 P.3d 346, 355.

Committee Notes

In certain cases when there is a question whether the use is prescriptive or permissive, the user's belief regarding whether the use is adverse may be at issue. See Harrison v. SPAH Family Ltd., 2020 UT 22, paras. 31, 41-43, 466 P.3d 107, 116-17.