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Easements 101—The Burdens and the Benefits

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Public and private easements are common throughout the area and impact development projects in many ways. Developing around, or in spite of, these easements requires an understanding of the purpose of the easement and the personnel responsible for administering the easement.

Permanent or temporary easements are specific rights or restrictions placed on public or private property for the benefit and use of a third party or to further a public purpose. As part of the entitlement process, planning agencies and/or consulted governmental agencies will commonly require easements over sensitive areas due to state requirements (i.e., forest conservation regulations, wetlands or critical areas), environmental management and planning purposes (such as open space or scenic easements). In other cases, private easements are negotiated to serve a particular user. In planned developments, communities are designed around such easements, which impacts overall layout and densities. On individual lots, design and accessory buildings are generally impacted.

Justifications for easements vary between jurisdictions, but most are imposed to satisfy environmental requirements or development regulations. Maryland's environmental regulations set criteria for the preservation of wetlands and other environmentally sensitive areas via easements that restrict development in and around those areas. Virginia jurisdictions routinely require similar environmental easements, most commonly to protect perennial wetlands that run to the Chesapeake Bay (commonly referred to as "resource protection areas" or RPAs), to preserve existing forests or steep slopes/mountainsides. Examples of non-environmental public easements include slope, support or drainage easements required by public transportation agencies from along those portions of a private property which directly abut transportation infrastructure (i.e. road, rail lines, piers etc.).

Private easements between parties are also common to resolve access issues, private buffers, non-traditional open space needs (e.g. "air and light" easements in highly urbanized areas), drainfields or manage other issues between neighbors. In instances where a property has limited access from a public street, it is common for an adjacent property to be burdened with an access easement to provide ingress and

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egress through the property. In other situations, property owners need temporary use of adjacent property to manage construction issues, such as staging requirements, and can request an easement to allow such use. These easements are generally, but not always, given by the property owner for compensation or reciprocal easements. Finally, a property owner may reserve an easement across a portion of property it intends to subdivide which may benefit property it intends to hold.

In order to effectively provide notice to all future purchasers, permanent easements must be documented in the land records. The most

common technique is a written agreement, though in limited circumstances, an easement may be granted via a notation on a record plat. There are two elements to any easement: the burden and the benefit. The burden is the restriction associated with the easement; the benefit runs to the party taking advantage of the restriction. In all cases, the burdened property owner must sign the agreement before it can be recorded in the land records. If the benefited party has any obligations under the easement, that person or entity must also execute the easement. For example, in the case of an access easement, the burdened property is the property over which the access runs and the benefited property is the property adjacent to the burdened property that utilizes the access. Both owners must sign such an easement because each has responsibility with respect to the use and maintenance of the access. When the benefited party is a governmental agency, it generally signs an acknowledgement or acceptance of the easement.

Although the restrictions on the use of the property subject to an easement differ based on the purpose of the easement, in general, easements granted at the behest of governmental agencies completely restrict the use and development of the land. Private agreements, being the result of negotiations between the parties, will carry fewer restrictions on the burdened property.

Simply because an easement exists on a property and impedes planned development, however, does not mean the matter cannot be resolved satisfactorily and allow the development. Any easement can be removed and/or easement areas exchanged to allow for a specific development program upon a thorough understanding of the purpose of the easement, the applicable law, if any, and the people responsible for controlling the easement. ■

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