

EASEMENT RIGHTS

Did You Know That You Can Lose Your Easement Rights If You Fail to Exercise Them?

Easements come in all shapes and sizes. The easement may give you the right to access the water or the right to maintain a septic system or a road across an abutter's land. If you discontinue your use of the easement, you run the risk of losing it altogether. It will also likely cause you to incur legal expenses to attempt to prove that you did not abandon the easement. Also, the loss of the easement could negatively impact the value of your property.

Extinguishment of easement rights can occur through abandonment . "Abandonment" means conduct manifesting an intent to no longer exercise the easement. Simple non-use of the easement is usually not enough to prove abandonment but is some evidence of it. The decisive factor in establishing abandonment is proof of the easement holder's intent to give up the easement. The longer the period of non-use, the greater the inference of an intention to abandon the easement. Non-use will support a finding of abandonment if the holder/owner of the easement performs "clear, unequivocal and decisive acts" to show an intent to abandon it.

Many of the cases dealing with abandonment look at whether the easement holder took any steps to preserve their rights when confronted with encroachments or other acts inconsistent with the easement holder's easement interest in the property. When buildings, fences or other structures obstruct or even partially obstruct the easement or prevent the easement holders from exercising their easement rights, a court is more likely to find that the easement rights have been extinguished.

To protect your land interests you must remain vigilant. An old equity maxim provides that equity aids the vigilant and not those who slumber on their rights. If there is any question about your rights regarding your property or your property interests in another parcel, you should consult with a lawyer immediately.