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EASEMENT CHECKLIST

Things to Remember in Reviewing and Drafting Easements

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Things to Remember in Reviewing and Drafting Easements

Associations may consider granting easements for many purposes. This checklist applies whether the easement requested relates to a neighboring development, a temporary or permanent easement requested by a governmental entity, an easement to an owner or a number of other reasons. We recommend reviewing any easement requests with the following checklist with the association's attorney.

1. Determine the Association's (and any other necessary party's) authority to grant an easement.
2. Get a clear understanding of the current intentions of the parties, as well as the future intentions of the parties and the potential development of the land.
3. Obtain and include a legal description of the land to be burdened and the land to be benefited by the easement. Here, it is also important to know the physical characteristics of the land. If the legal description is in metes and bounds, make sure you understand where it is located.
4. Perform a title search of both the benefited and burdened lands.
5. Determine if potential future subdivision of the benefited land may occur or should be addressed and whether the benefits should be extended to additional property acquired by the owners of the benefited land.
6. The purpose of the easement should be clearly stated (in addition to traditional common interest community or utility purposes, an easement can be used to settle encroachment disputes).
7. Describe the easement rights to be created (this should be broad or a limited in scope, as intended by the parties).
8. Describe whether the easement is:
 - a. intended to be personal to the grantee ("in gross"), in which case restrictions on transferability should be expressed, or
 - b. intended to be transferred by the grantee to subsequent owners of the benefited land, in which case the terms "appurtenant" and "covenant intended to run with the land" should be used in the instrument.
9. Describe whether the easement is exclusive or nonexclusive (address the use of the easement area by the owner of the burdened land parcel and any others).
10. Address whether the beneficiary or the owner of the burdened land has the right to construct improvements within the easement area.
11. Describe the allocation of maintenance responsibilities and expenditures (include the right of access outside the easement area for repair, if needed).
12. The duration of the easement should be stated (perpetual, for a term of years, or until a specified event).
13. Determine whether there are deeds of trust, mortgages or other liens superior to the easement; if so, obtain subordination agreements from the holders of those liens.
14. The easement instrument should be recorded.
15. After creation and recordation, any conveyance of the benefited land should describe the easement in the granting clause and any conveyance of the burdened land should except the easement from any warranty of title.