

express access easement has given rise to controversy.¹⁶ In resolving this issue, courts will consider the necessity for the gate and whether the gate unreasonably interferes with use of the roadway.¹⁷

The holders of a common easement may enter an agreement governing the allocation of the cost of maintenance and repair.¹⁸ A Kentucky appellate court has determined that an agreement to share maintenance costs did not encompass paving a gravel driveway.¹⁹

§ 8:36 Concurrent use of servient estate by two or more easement holders—Successive or different easements over same servient estate

Research References

West's Key Number Digest, Easements ⇨1, 2

When two or more persons hold either successive easements in the same area or different types of easements in a servient estate, neither may unreasonably interfere with the other party's rights.¹ Courts often find that the servient estate can accommodate the diverse needs of easement holders.² In case of conflict, however, the owner of a prior easement is entitled to enjoy that servitude

¹⁶See *Hunt v. Richardson*, 216 Ariz. 114, 120–125, 163 P.3d 1064, 1070–1075 (Ct. App. Div. 1 2007), as corrected on denial of reconsideration, (Aug. 23, 2007) and review denied, (Jan. 8, 2008).

¹⁷See *Hunt v. Richardson*, 216 Ariz. 114, 120–125, 163 P.3d 1064, 1070–1075 (Ct. App. Div. 1 2007), as corrected on denial of reconsideration, (Aug. 23, 2007) and review denied, (Jan. 8, 2008) (remanding question of whether automatic gate opened by remote control devices amounted to unreasonable interference with easement). See also § 8:28 (discussing erection of locked gates by servient owner).

¹⁸*Payne v. Rutledge*, 391 S.W.3d 875, 877–880 (Ky. Ct. App. 2013). See also § 8:37 (discussing duty to repair and maintain easements).

¹⁹*Payne v. Rutledge*, 391 S.W.3d 875, 878–880 (Ky. Ct. App. 2013).

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¹*Upson v. Stafford*, 205 Ga. App. 615, 616, 422 S.E.2d 882, 884 (1992); *Ashland Pipeline Co. v. Indiana Bell Telephone Co., Inc.*, 505 N.E.2d 483, 487 (Ind. Ct. App. 1987) (declaring that “each concurrent easement owner has the right to make reasonable repairs, alterations, and improvements to the easement so long as such do not injuriously affect his co-owner” and holding that one easement holder was negligent in not having identified interests of concurrent owners before excavation); 3 *Tiffany on Real Property* § 813 (3d ed.).

²*Holbrook v. Telesio*, 225 Cal. App. 2d 152, 155, 37 Cal. Rptr. 153, 154 (4th Dist. 1964) (holding that use of access easement by second dominant owner would not constitute unreasonable burden for prior easement owner); *Upson v. Stafford*, 205 Ga. App. 615, 616–617, 422 S.E.2d 882, 884 (1992) (holding that

even if such usage interferes with the rights of a subsequent holder.³ On the other hand, the holder of a junior easement must not unreasonably interfere with the enjoyment of the prior easement.⁴ The holder of the junior easement, of course, is not required to secure the permission of the servient landowner in order to develop and use the easement.⁵

§ 8:37 Repair, maintenance, and improvements—Rights and duties in general

Research References

West's Key Number Digest, Easements ⇨53

Parties to an express easement may provide for repair and maintenance,¹ and the prudent drafter should follow this course. Absent an agreement to the contrary, the obligation to repair and

construction of drainage ditch by second easement holder did not interfere with prior easement holder's use of roadway easement); *Smith v. Edwards*, 249 Mich. App. 199, 209-210, 645 N.W.2d 304, 309-310 (2002) (finding that use of easement for ingress and egress by second easement holder, a portion of which overlapped prior access easement, did not interfere with prior easement holder's usage); *Nemaha Natural Resources Dist. v. Village of Adams*, Gage County, 207 Neb. 827, 829-830, 301 N.W.2d 346, 348-349 (1981) (finding that village's waterline easement did not constitute unreasonable interference with district's prior easement for flowage of water over dam); *Ingle Butte Ranches, Inc. v. Fronapel*, 183 Or. App. 478, 483-484, 53 P.3d 453, 455 (2002) (holding that servient owner's grant of express easement to build bridge did not unreasonably interfere with prior prescriptive easement to cross creek); *Associates of Philipsburg v. Hurwitz*, 292 Pa. Super. 406, 413-414, 437 A.2d 447, 450-452 (1981) (recognizing that servient owner could grant later rights-of-way over same entranceways and stressing that presumed future overburden does not represent interference with prior easement); *Rippetoe v. O'Dell*, 166 W. Va. 639, 276 S.E.2d 793, 796 (1981) (finding that relocation of gas line easement under access easement did not interfere with ingress and egress).

³3 *Tiffany on Real Property* § 813 (3d ed.).

⁴*The Fair v. Evergreen Park Shopping Plaza of Del.*, 4 Ill. App. 2d 454, 466-469, 124 N.E.2d 649, 654-656 (1st Dist. 1954) (subsequent holder of easement in parking lot cannot extend building into easement area when such construction interferes with rights of prior owners); *Ludwig v. Spoklie*, 280 Mont. 315, 319, 930 P.2d 56, 59 (1996); *Rudisill v. Icenhour*, 92 N.C. App. 741, 744, 375 S.E.2d 682, 684 (1989) (subsequent easement holders entitled to use street easement "to the extent that their use does not interfere with the prior easements"); *Johnson v. Skyline Telephone Membership Corp.*, 89 N.C. App. 132, 134, 365 S.E.2d 164, 166 (1988); *Howorka v. Harbor Island Owners' Ass'n, Inc.*, 292 S.C. 381, 385, 356 S.E.2d 433, 436 (Ct. App. 1987); *Preshlock v. Brenner*, 234 Va. 407, 410, 362 S.E.2d 696, 698 (1987).

⁵*Ludwig v. Spoklie*, 280 Mont. 315, 319, 930 P.2d 56, 59 (1996).

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¹Restatement of Property § 485 comment a (noting that parties may al-