# Real Estate Matters: Ask the real estate lawyer

*by Ilyce_Glink*

Q: A title company insured my home and failed to disclose a slope easement in favor of the city. Eucalyptus trees growing on this back slope are constantly shedding leaves in my swimming pool/yard. An appraiser retained by the title company says that the easement does not diminish the value of my property. But it has a negative impact, as described above. The city has asked me to cease trimming the trees and to remove rocks placed on the slope. My control on my property has been compromised by this undisclosed easement. The title company is not offering any compensation based on appraisal report. What are my chances of successfully suing the title company in a small claims court, or do I need a local attorney who specializes in title claims? A: The basic underlying principal of title insurance is to protect a real estate buyer against a loss due to a title defect on the property purchased. But you have fallen right into one of the problems many buyers discover when they find that the title company has failed to disclose a title issue when you purchased your home. If you could develop and build on the easement area, you would have a better chance in your claim against the title company. Your loss would be your inability to develop your property due to the undisclosed easement and what that was worth. If you buy 10 acres of land to build 10 homes and can only build 8 due to the easement, you have suffered a loss. If you buy a home and find that an undisclosed easement is under your garage and the garage has to be torn down, you have a loss and have a claim against the title company. If your sole issue is the leaves that fall onto your pool, you have a unique claim and probably won't find a title company that will be sympathetic to it. That "loss" will probably not fall within the scope of the definitions of a loss of the policy. Besides, you knew the trees were on the property when you bought the home and those trees can't be the claim for the loss, it's the easement. If you were planning to remove the trees and plant fruit or nut trees for your business and later found out that you could not, you might claim that loss, but if you are located in a single family area and can continue to use your home as intended, the leaves falling would be no different than leaves falling from a neighbors' yard. If you decide to pursue it because you have additional information, your title claim will probably require the services of an attorney who has had ample experience with title claims against title insurance companies. Q: We purchased a house with a steep winding driveway. We have an easement to the land beneath the driveway, but the people who purchased the lot next to us actually own the land. They bought this property after we bought ours. They built a big utility on the top portion of our driveway, forcing us to move our driveway over and making our drive down to our house steeper. We complained to the zoning commissioner. He said they have a right to build anything they want on the easement land, since they own it, but that they must give us some kind of access to get down to our property. Is this fair? We live in snow country. A: The answer to your question probably lies in the language of the easement agreement. Generally, an easement is a type of interest given by one landowner to another. For example, as in your case, a neighbor gives an easement to allow a neighbor to access his land, to get utilities to his land, to reach a landing area for a boat, and so forth. Most easements are written and they are recorded against the title of the land that will be burdened by the use. In your case, the easement should be recorded against your neighbor's land. You should get a copy of the document. Once you get the document you should review it to determine if your neighbor has the right to relocate the driveway or to make other uses of the easement area that would impair your use of the driveway. If the document does not allow your neighbor to relocate the driveway or impair your use, you have right to complain. Unfortunately, if they have the right to change the driveway under the terms of the easement, you'll be out of luck. If you have trouble figuring out what your neighbor can or can't do under the terms of the easement, talk to a real estate attorney. If the document has been well drafted, the attorney should be able to tell you quickly what can and can't be done. If the document isn't well drafted, your attorney may have to do a little research into easement laws to give you his opinion. It's unfortunate that your neighbor wasn't willing to discuss this issue with you and come up with a solution that could work for both of you. Â© 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by TMS