

by Ilyce_Glink

Q: I bought my home, which is surrounded by other property. The house included an easement that allows me ingress and egress for my property. My neighbor bought the lot next door with full knowledge of the easement. The easement was properly recorded with the county. My neighbor wants to park on the easement. We informed him that it would impair our use. He's seeking permission from the courts to grant him the right to park on the easement. What do you think our chances are in stopping him from parking on the easement? A: Some homes are not adjacent public streets and if they are not, these homeowners need a way to get from the public streets to their home. The only way they can get from the private street is by going over a neighbor's property. You have an easement that gives you certain rights over your neighbor's property. The neighbor still owns the property and can still use the easement area subject to your rights. The key to your case is going to be deciding what rights you are granted under the easement document and what rights the owner of the property that gave you the easement retained to that land. An easement can take many forms and include a variety of restrictions. Some easements may allow only pedestrians to use a piece of land, while others might allow automobiles but not trucks. Others easements may be in place to allow light and air to pass through an area or to avoid obstructing views. If your easement agreement was very clear as to what rights you were given, the owner of the land on which the easement is located can't and shouldn't be able to interfere with your use of the easement area. If your neighbor can park on a part of the easement area and you still have full access to your property, the court may decide that the neighbor's use is consistent with the easement grant and permit him to park on the easement area. If his parking on the easement area impairs your ability to use the easement, the court should find that the neighbor's use is inconsistent with the easement grant and should not permit his continued parking on the easement area. You need to keep in mind that just because you have an easement, you don't own the land. The neighbor can install utilities under the easement area and may even be able to build over the easement area. The issue becomes whether that use is inconsistent with your use to deprive you of your rights under your easement. As you are in litigation and presumably have an attorney representing you, you should consult with him or her to review the specific terms of your easement and how the law of your state typically handles issues like yours. Q: I recently purchased a home where we are experiencing water leaking in a finished basement (tri-level home). We did have a home inspection prior to purchasing the property, but due to the wallpaper, nothing would have been able to be detected. It initially appears to be a crack in the foundation that is causing the leaking, and at this time we're unclear how severe the damage is. The initial estimates to fix the problem suggest it could cost up to \$10,000. Do we have any legal recourse against the previous owner as nothing was indicated on the disclosure when we purchased the home? If so, what is my best approach? A: Most states have seller disclosure laws. These laws require a seller to disclose to a buyer known material defects in the home. The first issue is to determine whether the seller knew of the leak or the crack in the wall. Did the seller paint or add the wallpaper to the basement walls just before putting it on the market to hide the water problem or the crack in the wall? Did the neighbors see work being done in the home prior to listing it that might relate to this problem? Did the seller do anything to hide the damage from being discovered? If you can prove that the seller hid the problem, you may have a good case against the seller. On the other hand, if the wallpaper has been in place for a long time, it's possible that your sellers didn't know about it. If you don't think you can prove that the sellers knew of the problem, you may have a hard time pursuing an action against the seller. In some cases it's possible that the problem you are now experiencing is new. While the crack may have been there for some time, the water problem may be new to the home. It's even possible that new landscaping or just the passage of time is now causing the water problem in the basement. In order to go after the sellers, you're going to need prove that they knew of the problem, had a duty to disclose it to you, and failed to disclose it. A local real estate attorney or litigator who specializes in real estate can provide further information about any legal options you may have. © 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by TMS

