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# Back To School: Easements 101

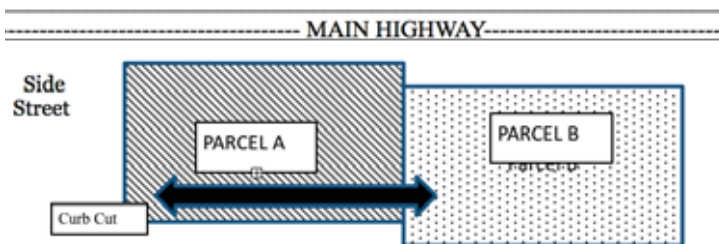
**G**eorgia kids are heading back to school, so it is a perfect time for a primer on easements. An easement describes the right of one person to use the land of another person for a specific purpose. Because easements affect the manner in which an owner can use her property, it is important for that owner to understand: the nature of any easement affecting her property and her rights and obligations with respect to such easement.

## TYPES OF EASEMENTS

There are two main categories of easements: appurtenant easements and easements in gross.

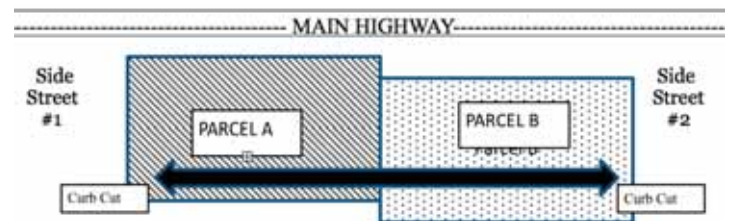
An **appurtenant easement** involves at least two properties and describes the rights of one property, which may be legally referred to as the “dominant estate,” over another property, referred to as the “servient estate.” Appurtenant easements will generally “run with the land” meaning that subsequent owners of the properties affected by the easement will be benefited and burdened by it, respectively.

An Access Easement is an appurtenant easement. To illustrate, consider a “Parcel A” commercial property, which is located on the corner of a busy highway and side street, and “Parcel B,” a second commercial property located off the busy highway and the side street, so Parcel B may negotiate an access easement with Parcel A, under the terms of which Parcel B may use a certain portion of Parcel A’s property (depicted below with arrows) and Parcel A’s curb cut to the side street, all for the limited purpose of accessing the Parcel B property. In this scenario, Parcel A is the servient estate, and Parcel B is the dominant estate. Future owners of Parcel B will continue to have the rights over Parcel A’s property because the easement runs with the land.



A subset of appurtenant easements are **reciprocal easements**, which means that each parcel has rights in the other. In a reciprocal easement agreement, a parcel is both servient as to some easement rights and dominant as to others. Returning to the example above, if we add another side street #2 adjacent to Parcel B, and Parcel A has rights to access to side street #2 by crossing over a certain portion of Parcel B, then the parties have a reciprocal easement.

While an appurtenant easement involves two or more properties, an easement in gross involves only one property and grants certain rights with regard to that



property to a particular person or entity. Easements in gross also run with the land, meaning that any subsequent owner will be affected by the easement (so long as the person holding the easement rights exists). Common examples of easements in gross are right of way easements and utility easements.

## CREATING AN EASEMENT

There are four ways to create an easement in Georgia:

1. **Creation by Deed:** The easement is created by an express agreement between the applicable property owners which describes the relationship of the parties, the type of easement and any terms or conditions for the use of the easement. The easement may be temporary in nature, for example, like a construction easement. The easement may impose restrictions on the parties, such as maintenance obligations for the easement area or cost sharing arrangements. The easement may prevent an owner from building or making other changes to the area of his property affected by the easement. The agreement will ideally clearly describe the specific portion of the property which is being burdened by the easement. I always recommend that parties attach not only a written legal description, but also a visual depiction of the easement area.
2. **Creation by Prescription:** With no express agreement, the party seeking to establish an easement by prescription must prove that he has continuously used the property of another for 20 years (7 years if under “color of title” which means that there is some evidence of the existence of the easement, such as the mention of the easement in a deed). Example: If the owners of Parcel A have used a path across Parcel B for more than 20 years for the purpose of reaching the road, then assuming the Parcel B owner has made no objection to such use, an easement by prescription may have arisen in favor of Parcel A with regard to the path on Parcel B.
3. **Creation by law:** Upon a petition from an owner of landlocked property and if the petitioner can show that such an easement is necessary to access said property, Georgia courts may order that an access easement to said property be created as a matter of law. In such case, the party seeking the easement will likely be required to compensate the burdened property for the value of the easement so created.
4. **Creation by implication:** Easements can also be implied, and the fact patterns for implied easements vary. An example of an implied easement arises when a property owner sells the rear portion of his property, but that property has no

direct access to a road and the seller does not state in the deed that the new owner has an easement for access. The law will imply an easement for this purpose.

Easements can be terminated by an express agreement of the applicable parties, and they may be legally abandoned, which requires more than just a showing of non-use of the easement.

#### HOW TO KNOW IF AN EASEMENT AFFECTS YOUR PROPERTY

Generally speaking, easements created by deed or law will be recorded in the public record in the form of an easement agreement, part of a deed or depicted on a recorded survey or plat of the property. An easement of any type may be apparent from a physical inspection of the property (and therefore depicted on a survey of the property, even if that survey is not recorded) or uncovered in an affidavit from the owner given at closing or a representation made in a purchase and sale agreement. Surveys are essential to understanding how easements affected property - a surveyor can plot easements on a survey of the property to provide a visual depiction of an easement for the property owner. If it is unclear if an easement affects a certain property, the surveyor can advise as to what property is described by the easement.

## Easements Appurtenant Running with the land

Easement appurtenant runs with the land.

- Appurtenant to dominant tenement.
- Continues to exist even if:
  - dominant tenement sold
  - servient tenement sold
- Benefit or burden automatically passed on to all subsequent owners.



The  
WOW  
Factor

# Bitexco Financial Tower

Living in the 21<sup>st</sup> Century

**B**itexco Financial Tower is a 68-story, 861-foot skyscraper in Ho Chi Minh City (formerly Saigon), Vietnam. At completion in 2010, it became the tallest building in Vietnam. (It is now the third tallest in the country, but remains the tallest in the city.) It is owned by Bitexco Group, a Vietnamese multi-industry corporation, with a focus on real estate development.

The Tower is an international standard mixed use project which includes 409,000 square feet of premium Grade A office space (from the 7th to 65th floors), five-stories of retail, a food court and seven screen multiplex cinema. At the 49th floor, Saigon Skydeck offers 360 degree panoramic views of Ho Chi Minh City. From floors 50 to 52, there are food and beverage establishments, including a fine dining restaurant and bar/nightclub.

The tower was designed by Carlos Zapata, Design Principal and Founder of Carlos Zapata Studio ([www.cz-studio.com](http://www.cz-studio.com)). Zapata was born in Venezuela but is based in New York City. He drew inspiration for this skyscraper's unique shape from Vietnam's national flower - the lotus. (The helipad cantilevers from the 52nd floor and resembles a blossoming lotus bud; it extends 72 feet out from the main structure, and is strong enough to carry a helicopter up to 3 tons of weight.)

**In 2013, CNN.com named the Bitexco Financial Tower one of the 25 Great Skyscraper Icons of Construction. And in 2015, Thrillist.com named the Bitexco Financial Tower the #2 Coolest Skyscraper in the World.**



Compiled by network sources

Being poor sure takes up a lot of a person's time.