IOWA LAW ON EASEMENTS

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REAL ESTATE TRANSACTIONS SEMINAR

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CHARLES P. AUGUSTINE
KLATT, AUGUSTINE & RASTEDE, P.C.
531 Commercial Street, Suite 250
Waterloo, Iowa 50701
Telephone (319) 232-3304
Fax (319) 232-3639
caugustine@klatt-law.com

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CHARLES P. AUGUSTINE

I. BASIC PRINCIPALS OF EASEMENTS.

A. Essential Nature of an Easement. An easement is a liberty, privilege or advantage in land without profit that exists separate and distinct from fee ownership of the land.[1] It is an interest in land "which entitles the owner of the easement to use or enjoy land in the possession of another."[2] Whereas the holder of a fee interest in land is its fee owner, the holder of an easement interest in that land holds nothing more than the right to the use of that land within the scope of the easement. Easements are considered non-possessory interests in land that they authorize the holder thereof to use the land for one or more specific purposes.[3]

1. Easements Distinguished From Licenses. An easement should be distinguished from a license. Like an easement, a license authorizes the holder to do one or more particular acts upon the land of another.[4] However, whereas an easement generally is irrevocable except in accordance with the terms of the grant that created the easement, a license is revocable at the will of the grantor.[5]

B. Appurtenant Easements vs. Easements in Gross. Easements may be classified as appurtenant or in gross.[6]

1. Appurtenant Easements. "'An appurtenant easement is an incorporeal right which is attached to, and belongs with, some greater or superior right—something annexed to another thing more worthy and which passes

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[1] Hawk v. Rice, 325 N.W.2d 97, 98 (Iowa 1982); Hadsall v. West, 67 N.W.2d 516, 518 (Iowa 1955).

[2] Rivera v. Clear Channel Outdoor, LLC, 7 N.W.3d 734, 737 (Iowa 2024).

[3] Id.; 28A C.J.S. Easements § 1, at 351 (2019).

[4] Robert's River Rides, Inc., v. Steamboat Dev. Corp., 520 N.W.2d 294, 300 (Iowa 1994).

[5] Independent Sch. Dist. of Ionia v. DeWilde, 53 N.W.2d 256, 261 (Iowa 1952).

[6] See McCoy v. Chicago, M. & St. P. Ry. Co., 155 N.W. 995, 996-997 (Iowa 1916) (addressing the distinction between easements appurtenant and easements in gross).

as an incident to it'."[7] An appurtenant easement does not exist separate from the specific land to which it is annexed.[8] It is not personal to any party benefitting thereby, but rather is attached to the land it benefits.

a. The Dominant and Servient Estates. The land benefitted by an appurtenant easement is referred to as the "dominant estate," while the land burdened by an appurtenant easement is called the "servient estate."[9]

b. Appurtenant Easements "Run with the Land". An appurtenant easement is deemed to "run with the land." Put differently, it passes with any conveyance of the land to which they are appurtenant. This is true even if the instrument of conveyance fails to specifically reference the easement.[10] Further, the person to whom the servient property is conveyed takes that property subject to an appurtenant easement without express reference to the easement.[11]

2. Easements in Gross. An easement in gross provides to the benefitted party a personal right to the use of another person's property that is entirely independent of the party's ownership of land.[12] Although easements in gross burden a servient estate, there is no dominant estate. Easements in gross are "appurtenant to nothing."[13] An example of an easement in gross is an easement that allows a person to traverse a parcel adjacent to a lake in order to allow that person lake access. Such an easement serves the benefitted person regardless as to whether that person owns any neighboring land.

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[7] Wymer v. Dagnillo, 162 N.W.2d 514, 517 (Iowa 1968) (quoting 25 Am. Jur. 2d, Easements and Licenses, § 11, page 425).

[8] Id.

[9] Bormann v. Board of Supervisors in and for Kossuth Cty., 584 N.W.2d 309, 315; McKeon v. Brammer, 29 N.W.2d 518, 525 (Iowa 1947).

[10] Teachout v. Capital Lodge I.O.O.F., 104 N.W. 440, 441-442 (Iowa 1905).

[11] Rank v. Frame, 522 N.W.2d 848, 852 (Iowa 1994); McKeon, 29 N.W.2d at 526;

[12] 25 Am. Jur. 2d Easements and Licenses § 5.

[13] Thompson v. City of Osage, 421 N.W.2d 529, 532 (Iowa 1988).

C. **Affirmative Easements vs. Negative Easements.** Historically, easements had been classified as either affirmative or negative. Affirmative easements authorized the conduct of action on the servient estate.[14] Negative easements, on the other hand, placed a restriction on what may be done on the servient estate.[15] Today, affirmative easements most often are simply considered easements and negative easements are construed as use restrictions subject to the limitations provisions of section 614.24 of the Code of Iowa.[16]

II. **CREATION OF EASEMENTS.** Generally, there are four ways in which to create an easement: (1) by express grant or reservation, (2) by implication, (3) by prescription, and (4) by necessity.[17] However, "[w]hile there are different methods of creating easements, the easements created do not differ."[18] Regardless as to how it was created, any easement is a liberty, privilege, or advantage in land without profit that exists apart from the ownership of the land.[19] Yet, the nature and breadth of an easement may differ from one to the next based upon the manner in which it was created.

A. **Express Easements.** Express easements are easements created by express grant or reservation.[20] An express easement may be created by means of virtually any instrument, including a deed, a contract, a will, or a plat map.[21]

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[14] Amana Soc. v. Colony Inn, Inc., 315 N.W.2d 101, 110 (Iowa 1982).

[15] Id.

[16] Id.; Franklin v. Johnson, 899 N.W.2d 741 (Table), 4-5 (Iowa Ct. App. 2017). See Shri Lambodara, Inc. v. Parco, Ltd., 995 N.W.2d 505, 508 (Iowa 2023) (declaring the terms "affirmative easement" and "negative easement" to be outdated and more appropriately replaced with the terms "easement" and "use restriction" in light of 2014 amendments to section 624.24 of the Code of Iowa).

[17] Nichols v. City of Evansdale, 687 N.W.2d 562, 568 (Iowa 2004); Kahl v. Clear Lake Methodist Camp Ass'n, 265 N.W.2d 622, 624 (Iowa 1978).

[18] McKeon v. Brammer, 29 N.W.2d 518, 522 (Iowa 1947)

[19] Hawk v. Rice, 325 N.W.2d 97, 98 (Iowa 1982).

[20] Gray v. Osborn, 739 N.W.2d 855, 861 (Iowa 2007).

[21] See id. (easement created by plat map); Hawk, 325 N.W.2d at 98-99 (easement created by deed); Maddox v. Katzman, 332 N.W.2d 347, 351 (Iowa Ct. App. 1982) (easement created by plat map).

1. An Express Easement Must be in Writing. Because an express easement is an interest in real estate that falls within the statute of frauds, an express easement must be in writing.[22]

2. Ambiguities Resolved by Intent of Parties. In construing express easements, the intent of the parties governs and courts will resolve ambiguities in such easements by gleaning what the parties to the easement intended.[23]

B. Easements Created by Implication. "An easement by implication is one which the law imposes by inferring the parties to a transaction intended that result, although they did not express it."[24]

1. Required Elements for the *Existence* of Easement by Implication. An easement by implication requires the existence of the following factors:[25]

   a. A separation of the unity of title.[26]

   b. A showing that prior to the separation of title, the use giving rise to the easement was so long continued and obvious that it clearly was intended to be permanent.[27]

   c. The appearance that the easement is continuous rather than temporary.[28]

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[22] Gray, 739 N.W.2d at 861.

[23] Hawk, 325 N.W.2d at 99.

[24] Schwob v. Green, 215 N.W.2d 240, 242–43 (Iowa 1974).

[25] Brede v. Koop, 706 N.W.2d 824, 830 (Iowa 2005); Bray v. Hardy, 82 N.W.2d 671, 673 (Iowa 1957).

[26] La Plant v. Schuman, 196 N.W. 280, 282 (1923) ("[A]n easement by implication does not arise . . . until there is a severance of the land by the owner of the whole . . . [and] it is only upon a severance by sale, or otherwise, that an easement is created corresponding to the arrangement made prior to and visibly existing at the time of the severance.").

[27] In La Plant v. Schuman, however, the Iowa Supreme Court stated that "it is of no importance, except as bearing upon the character of the easement, how long the arrangement or use . . . had continued while there was unity of ownership." Id.

[28] Starrett v. Baulder, 165 N.W. 216, 219 (Iowa 1917) ("To be continuous, an easement must be such as may be enjoyed without the intervention of any act on the part of any one, and

d. A showing that the easement is essential, and not just convenient, to the beneficial enjoyment of the land granted or retained.[29]

2. Factors That Weigh on the *Extent* of Implied Easement. In Schwob v. Green, the court was concerned not with the existence of an implied easement, but rather with the terms of the easement.[30] The court concluded that the intent of the parties at the time of separation of title determines the extent of the easement, "since the dominant estate acquires no greater user than the parties intended."[31] In considering the extent of the easement, the court found the following factors to be of particular relevance:[32]

a. Whether the claimant is the conveyor or the conveyee.[33]

b. The terms of the conveyance.

c. The consideration given for the conveyance.

d. Whether the claim is made against a simultaneous conveyee.

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noncontinuous is where there must be such intervention."). In Starrett, the court determined that one who conveys part of a parcel of land containing structures also grants by implication an easement for lateral support necessary to sustain such structures.

[29] Brede, 706 N.W.2d at 830 (declaring an easement "'essential' when it is reasonably necessary, as distinguished from being merely convenient"); (Nichols v. City of Evansdale, 687 N.W.2d 562, 570 (Iowa 2004) (stating that the use afforded by the easement must be necessary and not merely convenient to the beneficial enjoyment of the dominant estate). But see Schwob v. Green, 215 N.W.2d 240, 244 (Iowa 1974) (clarifying that only "reasonable necessity," as opposed to "strict necessity," need to be shown to establish that an easement by implication is "essential").

[30] Schwob, 215 N.W.2d at 242.

[31] Id. at 243. See Bray v. Hardy, 82 N.W.2d 671, 675 (Iowa 1957) (declaring that the right to an easement by implication "is measured by the condition existing at the time of the separation of ownership").

[32] Schwob, 215 N.W.2d at 243.

[33] In Rank v. Frame, the court noted that the one seeking to establish the easement by implication was the conveyor and not the conveyee and further noted that as a rule, "a reservation of easement is less readily implied than the grant of one." Rank v. Frame, 522 N.W.2d 848, 852 (Iowa 1994). The Rank Court stated that "greater restrictions should be imposed when determining the extent of an easement [created] by implied reservation." Id.

e. The extent of the necessity of the easement to the claimant.

f. Whether reciprocal benefits result to the conveyor and the conveyee.

g. The manner in which the land was used prior to its conveyance.

h. The extent to which the manner of prior use was or might have been known to the parties.

3. Application to Remote Grantees. The Iowa Supreme Court has held that a remote grantee may claim an easement by implication if such right existed in favor of a predecessor in interest.[34] As will be addressed later, this is not true as to easements by necessity.[35]

C. Prescriptive Easements. The establishment of an easement by prescription is based upon the principle of estoppel and is similar in concept to the establishment of title by adverse possession.[36] When determining whether a prescriptive easement has been created, Iowa courts consider the elements of adverse possession.[37] However, unlike adverse possession, which establishes title to the land in the claimant, an easement by prescription establishes the right to use the land.[38]

1. Elements of Easement by Prescription. For an easement by prescription to arise, the claimant must prove a use of the land of another for ten years or more that had all of the following characteristics:[39]

a. The use was under a claim of right or color of title.[40]

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[34] Schwob v. Green, 215 N.W.2d 240, 244 (Iowa 1974).

[35] See infra. note 54.

[36] Johnson v. Kaster, 637 N.W.2d 174, 178 (Iowa 2001).

[37] Id.; Larman v. State, 552 N.W.2d 158, 161 (Iowa 1996) ("Under Iowa law, a prescriptive easement is "created by adverse possession.").

[38] Id.

[39] Id.

[40] Paul v. Mead, 11 N.W.2d 706, 711 (Iowa 1943) (showing of claim of right without color of title is sufficient). To show claim of right, the claimant must show, based upon evidence independent of use of the land, that the easement is claimed as a right and not merely based upon

b. The use was open.

c. The use was notorious.[41]

d. The use was continuous.[42]

e. The use was hostile.[43]

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the land owner's permission. Collins Trust v. Allamakee County Bd. of Supervisors of Allamakee Cty., 599 N.W.2d 460, 464 (Iowa 1999) (stating that "acts of maintaining and improving land can support a claim of ownership and hostility to the true owner"); Barnes v. Robertson, 137 N.W. 1018, 1019 (1912) (finding that where a road had been legally established, used, worked, and improved, the public was acting under a claim of right); Lynch v. Lynch, 34 N.W.2d 485, 490 (1948) (inferring a claim of right where the claimant set out trees, erected a house and buildings, enclosed premises by fence, cultivated the land, and treated the land as an owner).

[41] The open and notorious requirements "exist to help place the true owner of land on notice of the adverse use of the land by another." Collins Trust v. Allamakee County Bd. of Supervisors of Allamakee Cty., 599 N.W.2d 460, 465 (Iowa 1999). Section 564.1 of the Code of Iowa requires that the owner of the land have "express notice" of the easement claimed by prescription over his or her land. Iowa Code § 564.1 (2025). However, the Iowa Supreme Court has held that "[t]he notice must either be actual or 'from known facts of such nature as to impose a duty to make inquiry which would reveal the existence of an easement'." Collins, 599 N.W.2d at 465 (quoting Anderson v. Yearous, 249 N.W.2d 855, 861 (Iowa 1977)).

[42] Continuous use necessary to support the establishment of a prescriptive easement does not mean constant or exclusive use. Johnson v. Kaster, 637 N.W.2d 174, 179 (Iowa 2001). Rather, "[the] claimant's possession 'need only be of a type of possession which would characterize an owner's use'." Id. (citing 2 C.J.S. Adverse Possession § 54, at 727 (1972)).

Sections 564.4 and 564.5 of the Code of Iowa afford the land owner the right to "interrupt" the continuous use by the one claiming a prescriptive easement by giving notice in writing to the claimant of the owner's intention to dispute the claimed easement. Iowa Code §§ 564.4-.5 (2025). "A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof." Iowa Code § 564.7 (2025). When such notice is given by the land owner, it shall be considered a disturbance of the claimant's use of the claimed easement and shall enable the claimant to bring an action for such disturbance. Iowa Code § 564.8 (2025). If the claimant prevails in any such action, he or she shall recover costs. Id.

[43] "Hostility does not impute ill-will, but refers to declarations or acts revealing a claim of exclusive right to the land." Collins, 599 N.W.2d at 464.

2. Elements Must be Proven Apart from Use. "In all actions [under chapter 564 of the Code of Iowa], in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as the party's right, but the fact of adverse possession shall be established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof."[44]

3. Permissive Use is not Adverse. "Where the use is undertaken by permission of the servient estate owner it is not adverse or under claim of right . . . and does not, by mere laps of time, become hostile or adverse."[45]

   a. Exception – Initially Permissive Use may Become Adverse. In Loughman v. Couchman, the court ruled that use that initially was permissive could later become adverse and that if said use continues for more than ten years, it could lead to an easement by prescription.[46] The Loughman Court held that the use which initially was permissive, became adverse by the transfer of the servient property.[47]

   b. Exception – Expenditures in Reliance on or for Consideration. In Simonsen v. Todd, the court ruled that an easement by prescription may be established where: (I) the original entry upon the lands of another was permitted by the servient owner, and (ii) the claimant, in reliance upon that permission or as consideration for the agreement, thereafter expends substantial money or labor to promote his or her use of the claimed easement.[48]

4. Expansion of an Express Easement by Prescription. An express easement for a limited use may be expanded by prescription.[49] "Where an easement

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[44] Iowa Code §564.1 (2025).

[45] Schwenker v. Sagers, 230 N.W.2d 525, 527 (Iowa 1975).

[46] Loughman v. Couchman, 47 N.W.2d 152, 154 (Iowa 1951).

[47] Id.

[48] Simonsen v. Todd, 154 N.W.2d 730, 736 (1967).

[49] Schwenker v. Sagers, 230 N.W.2d 525, 527 (Iowa 1975). In Schwenker v. Sagers, the owners of the dominant estate had an express easement for ingress and egress over a 30-foot strip of the servient estate. In addition to using the easement premises for ingress and egress, the

is granted for use in a specified manner or for a specified purpose, an open and continuous use thereof, under a claim of right, for the prescriptive period for purposes or in a manner beyond the scope of the grant, will create an easement of the larger scope by prescription."[50] However, the enlargement of an express easement by prescription "is rare."[51]

D. **Easements Created by Necessity.** An easement by necessity is a type of implied easement.[52] However, Iowa courts consistently have recognized easements by necessity as separate and distinct from easements by implication.[53] The Iowa Supreme Court has held that the most important distinction between an easement by implication and an easement by necessity is that while a remote grantor or grantee may claim an easement by implication if such right existed in favor of a predecessor in interest, an easement by necessity ordinarily may be claimed only by the immediate parties to the transaction.[54] Another significant difference is that an easement by implication requires a showing that the parties intended the easement to exist while an easement by necessity involves no such intent.[55]

1. Elements of an Easement by Necessity. The establishment of an easement by necessity requires the existence of the following elements:[56]

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dominant estate owners used the easement premises to pasture and water their livestock. The court held that the owners of the dominant estate "clearly [established] their hostile, adverse claim of right to pasture and water livestock." Id.

[50] Id. (quoting 110 A.L.R. 916).

[51] Id. "'The comparatively few cases which a comprehensive search has revealed as involving the point clearly indicate that where an easement is granted for use in a specified manner or for a specified purpose, an open and continuous use thereof, under a claim of right, for the prescriptive period for purposes or in a manner beyond the scope of the grant, will create an easement of the larger scope by prescription, although in the majority of such cases the enlarged easement was held in fact not to arise because of a lack of the elements necessary to create it.'" Id. (quoting 110 A.L.R. 916).

[52] Nichols v. City of Evansdale, 687 N.W.2d 562, 568 (Iowa 2004).

[53] Id.; Schwob v. Green, 215 N.W.2d 240, 244 (Iowa 1974).

[54] Schwob, 215 N.W.2d at 244.

[55] Id.

[56] Nichols, 687 N.W.2d at 568.

a. Unity of title to the dominant and servient estates at some point prior to severance.

b. Severance of title.

c. The necessity of the easement.

2. Strict Necessity not Required. In Newport v. Dulin, the Iowa Court of Appeals, in addressing the elements of easements by necessity, stated that a claimant need not show strict necessity in order for the establishment of an easement by necessity.[57] On the other hand, however, "mere inconvenience is not enough."[58] "When the use of an alternative involves disproportionate expense and inconvenience, the necessity requirement may be satisfied."[59]

3. Application of the Doctrine of Easement by Necessity. Easements by necessity most commonly arise when a landowner splits out a landlocked portion of his or her land and conveys it to another.[60] Under such circumstances, a court may imply an easement by necessity across the conveyor's land to provide the conveyee of the landlocked parcel with access to a public road.[61]

E. Application of the Doctrine of Estoppel to the Creation of Easements. A court may apply the doctrine of estoppel to establish or modify an interest in real property when doing so is determined to be necessary to prevent injustice.[62] In

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[57] Newport v. Dulin, 728 N.W.2d 60 (Table), 5 (Iowa Ct. App. 2006) (citing Schwob v. Green, 215 N.W.2d 240, 244 (Iowa 1974)). In Schwob v. Green, the Iowa Supreme Court recognized that the case had not been tried or submitted on the theory of easement by necessity. Nevertheless, the court addressed the difference between easements by implication and easements by necessity. Although the Court did not define "necessity" as it relates to easements by necessity, it held that in the context of easements by implication strict necessity need not be proven. Schwob, 215 N.W.2d at 244.

[58] Newport, 728 N.W.2d 60 (Table) at 5.

[59] Id.

[60] Nichols v. City of Evansdale, 687 N.W.2d 562, 568 (Iowa 2004) (citing Restatement (Third) of Property: Servitudes § 2.15 cmt. b (2000)).

[61] Id.

[62] Johnson v. Johnson, 301 N.W.2d 750, 753 (Iowa 1981). See Miller v. Lawlor, 66 N.W.2d 267 (Iowa 1954) (applying promissory estoppel to prevent the construction of a

Iowa, courts have considered the applicability of the doctrine of estoppel in establishing the existence of an easement.[63]

F. Specific Statutory Easements.

1. Conservation Easements. Chapter 457A of the Code of Iowa provides for the establishment of "conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, soil or water conservation, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state."[64] Conservation easements as described in chapter 457A may be held publicly or privately.[65]

2. Solar Access Easements. Chapter 564A of the Code of Iowa provides for the establishment and termination of solar access easements to "facilitate the orderly development and use of solar energy by establishing and providing certain procedures for obtaining access to solar energy."[66] Such easements may be established by the decision of a solar access regulatory board or by voluntary agreement.[67]

3. Public Utility Facilities Easement. Section 306.46 of the Code of Iowa provides that a public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way.[68] However, "[a] utility facility shall not be constructed or installed in a manner that causes interference with public use of the road."[69]

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residence that would obstruct neighbor's view).

[63] See Farmers and Mechanics Sav. Bank of Minneapolis v. Cambell, 141 N.W.2d 917 (Iowa 1966) (determining that elements of estoppel did not support establishment of easement); Black v. Whitacre, 221 N.W. 825 (Iowa 1928) (same).

[64] Iowa Code § 457A.1 (2025).

[65] See Id. (describing the acquisition of conservation easements by public bodies); Iowa Code § 457A.8 (2024) (describing the acquisition of privately-held conservation easements).

[66] Iowa Code § 564A.1 (2025).

[67] Iowa Code §§ 564A.5, 564A.7 (2025).

[68] Iowa Code § 306.46 (2025).

[69] Id.

a. Constitutional Considerations. In Juckette v. Iowa Utilities Board, the Iowa Supreme Court ruled that section 306.46 creates a valid statutory easement.[70] However, the Court was evenly divided on whether the creation of an easement under section 306.46 would result in a taking that requires compensation under the Fifth Amendment to the United States Constitution.[71]

4. Private Right to Condemn an Easement. Section 6A.4(2) of the Code of Iowa provides to the owner of a landlocked parcel a private right to condemn an easement "for the purpose of providing a public way which will connect with an existing public road."[72] "An owner who seeks to exercise the right of condemnation must in fact have no public or private way from the land to a street or highway."[73] However, "the public or private access way that will defeat a right to condemn under this statute must be an existing way."[74] Specifically, the right of a claimant to establish an easement by necessity is not the equivalent of an existing way under this directive.[75] Further, the existing access way that will overcome the right to condemn an access easement "must be reasonably adequate for the intended purpose."[76]

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[70] Juckette v. Iowa Utilities Bd., 992 N.W.2d 218, 222 (Iowa 2023).

[71] Id.

[72] Iowa Code § 6A.4(2) (2025).

[73] Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000) (citing In re Luloff, 512 N.W.2d 267, 271 (Iowa 1994)).

[74] In re Luloff, 512 N.W.2d 267, 271 (Iowa 1994).

[75] Id. See Carter v. Blakley, 115 N.W. 22, 22-23 (Iowa 1908) ("[Section 6A.4(2)] does not contemplate that the owner who claims to have no way to his land shall be compelled before inviting the aid of the statute to try one or more lawsuits for the purpose of finding out whether he has a way . . . [and] should be construed to mean that unless a party has a way either public or private which is unobstructed and unquestioned, he may institute proceedings under the statute.")

[76] Luloff, 512 N.W.2d at 271; see Anderson v. Lee, 182 N.W. 380, 382 (1921) (holding that the impracticality of sufficiently improving a strip of land owned by the claimant renders available to the claimant the right to condemn an access way over the land of another).

III. NATURE, SCOPE, AND EXTENT OF EASEMENTS.

A. General Rule as to Beneficial Rights Under an Easement. An easement holder normally has the right to the reasonable use of an easement in the manner and for the purpose for which it was intended. However, the easement holder may not use the easement in a manner or for a purpose that would impose additional burdens on the servient estate.[77] Further, the rights of the easement holder generally are not exclusive. They are subject to the use of the easement premises by the owner of the servient estate for any purpose not inconsistent with the rights conferred by the easement.[78]

B. General Rule as to Scope of an Easement. The scope of an easement varies depending upon the manner in which the easement was created.

1. Scope of an Express Easement. In construing express easements, "the cardinal principle is that the intention of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says."[79]

2. Scope of an Implied Easement. As was discussed previously, an easement by implication arises where the parties to the easement intended it yet failed to provide for it expressly. The existence of an implied easement, therefore, is based upon the intent of the parties. So too is the *scope* of an implied easement. In connection with an easement by implication, "the dominant estate acquires no greater user than the parties intended."[80]

3. Scope of a Prescriptive Easement. "The extent of an easement by prescription is measured by the use upon which it depends."[81] It is fixed by the use that engendered its creation.[82] Put differently, it cannot be

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[77] Wiegmann v. Baier, 203 N.W.2d 204, 209 (Iowa 1972); Schwartz v. Grossman, 173 N.W.2d 57, 59-60 (Iowa 1969).

[78] Schwartz, 173 N.W.2d at 60.

[79] Wiegmann, 203 N.W.2d at 208 (citing Hewitt v. Whattoff, 100 N.W.2d 24, 26 (Iowa 1959)).

[80] Schwob v. Green, 215 N.W.2d 240, 243 (Iowa 1974).

[81] Hagenson v. United Tel. Co. of Iowa, 209 N.W.2d 76, 82 (Iowa 1973).

[82] Loughman v. Couchman, 47 N.W.2d 152, 155 (Iowa 1951).

enlarged beyond the use that was asserted by the adverse user and acquiesced in by the owner of the servient estate.[83]

4. Scope of an Easement by Necessity. The scope of an easement by necessity is limited to the necessity that gave rise to its existence.[84] Its purpose and duration is directly dependent upon the necessity upon which it is based.[85]

C. The Expansion and Evolution of Easements.

1. Secondary Easements. Generally, an easement holder possesses all rights necessary for the reasonable and proper enjoyment of the easement.[86] This includes additional incidental rights often referred to as "secondary easements," that are necessary for said reasonable and proper enjoyment.[87] For example, the holder of a water flowage easement may have a secondary implied easement to allow the easement holder to maintain the flow of water.[88]

2. The Evolution of Easement Rights. Courts have recognized that the nature of use to which an easement is subject may change or evolve with the passage of time. In Skow v. Goforth, the court held that a 1908 deed that conveyed a "right-of-way to drive teams" must be construed in 2000 to allow for the ingress and egress of modern vehicular traffic, including farm tractors and implements.[89] Any evolution of the use of an easement,

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[83] Id.

[84] JP Morgan Chase Bank v. Nichols, 828 N.W.2d 326 (Table) 2 (Iowa Ct. App. 2013).

[85] Id.

[86] Keokuk Junction Ry. Co. V. IES Indus., Inc., 618 N.W.2d 352, 362 (Iowa 2000).

[87] SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635, 637-638 (Iowa 1983) (quoting Thompson, Real Property § 428, at 706 (1961)).

[88] See Nixon v. Welch, 24 N.W.2d 476, 479-80 (Iowa 1947) ("It is the law that the owner of the servient estate, over whose land an easement exists in a watercourse, in favor of the owner of the dominant estate, must permit the cleaning out of the watercourse across his land.")

[89] Skow v. Goforth, 618 N.W.2d 275, 278 (Iowa 2000). See also McDonnell v. Sheets, 15 N.W.2d 252, 255 (Iowa 1944) ("[I]t is the general rule that where a right-of-way is granted it may be used for any purpose to which the land accommodated thereby may reasonably be devoted unless the grant contains specific limitations and the grantee can avail himself of modern inventions, if by so doing he can more fully exercise and enjoy or carry out the object for which

however, may not impose additional burdens upon the servient estate.[90] A mere increase in the frequency of use of an easement that does not amount to a change in the intended use ordinarily will not constitute such an impermissible additional burden.[91] However, the Iowa Supreme Court has held that expanding the use of an access easement that originally was granted to two farm properties in order to accommodate a major residential development would constitute an impermissible change in use.[92]

D. Duties and Responsibilities Under Easements.

1. Duty to Maintain. As a general rule, the holder of an easement has not only the right, but also the duty, to maintain and repair the easement.[93] Such repair and maintenance may be accommodated by means of a "secondary easement" as previously discussed.[94] Where an easement is shared by multiple parties, the right and duty of maintenance and repair generally is provided or imposed on all such parties.[95]

2. Duty Not to Obstruct Use of Easement. The owner of the servient estate generally may not obstruct or interfere with the rightful use of an easement.[96] This is true even if the easement holder is using the easement

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the easement was granted.").

[90] Wiegmann v. Baier, 203 N.W.2d 204, 209 (Iowa 1972).

[91] Schwob v. Green, 215 N.W.2d 240, 243 (Iowa 1974).

[92] Stew-Mc Dev., Inc. v. Fischer, 770 N.W.2d 839, 847 (Iowa 2009).

[93] Koenigs v. Mitchell Cty Bd. of Supervisors, 659 N.W.2d 589, 594 (Iowa 2003).

[94] See SMB Investments v. Iowa-Illinois Gas and Elec. Co., 329 N.W.2d 635, 637-638 (Iowa 1983) (discussing "secondary easements").

[95] Bina v. Bina, 239 N.W. 68, 71 (Iowa 1931) (holding that the owners of the dominant and the servient estates, both of whom use the same road, share in the rights and burdens of repair as to the road); Brentwood Subdivision Rad Ass'n, Inc., v. Cooper, 461 N.W.2d 340, 342 (Iowa Ct. App. 1990) (holding that all property owners that use private roads as ways of necessity must contribute equally to the maintenance of those roads).

[96] Schwartz v. Grossman, 173 N.W.2d 57, 60 (Iowa 1969).

beyond or contrary to its originally intended purpose.[97] The proper remedy for the misuse of an easement normally is an action for damages, or for injunctive relief if the remedy at law is inadequate.[98]

E. Rights, Duties, and Responsibilities Subject to Express Contract. Notwithstanding general common law rules as to the rights and responsibilities related to easements, any such rights and responsibilities will be subject to the express terms of a valid contract between the parties.[99]

IV. TERMINATION OF EASEMENTS.

A. The Perpetual Nature of Easements Generally. If recorded, an easement created by written instrument is "operative against subsequent purchasers for value without notice."[100] Any appurtenant easement, once established, is "a perpetual right which cannot be disregarded or set aside, except by the consent of all concerned."[101] Such an easement ordinarily passes with any conveyance of the land even if the instrument of conveyance fails reference the easement.[102]

B. The Termination of Appurtenant Easements. Notwithstanding the generally perpetual nature of appurtenant easements, the may be subject to termination under certain circumstances.

1. Termination when the Purpose of the Easement no Longer Exists. An easement for a particular purposes terminates when that purpose ceases to exist.[103]

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[97] Halsrud v. Broadale, 72 N.W.2d 94, 101 (Iowa 1955); Thul v. Weiland, 239 N.W. 515, 517 (Iowa 1931). The Halsrud Court also held that the misuse of an easement will not result in its forfeiture "unless it is impossible to sever the increased burden in such a way as to preserve to the owner of the dominant tenement that to which he is entitled." Halsrud, 72 N.W.2d at 100.

[98] Id. (citing 28 C.J.S., Easements § 62).

[99] Koenigs v. Mitchell County Bd. of Supervisors, 659 N.W.2d 589, 594 (Iowa 2003); Thompson v. JTTR Enviro, L.L.C., 906 N.W.2d (Table) 3 (Iowa Ct. App. 2017) ("Easements are subject to ordinary contract principles").

[100] McKeon v. Brammer, 29 N.W.2d 518, 522 (Iowa 1947).

[101] Ehler v. Stier, 216 N.W. 637, 638 (Iowa 1927).

[102] Teachout v. Capital Lodge I.O.O.F., 104 N.W. 440, 441-442 (Iowa 1905).

[103] Beim v. Carlson, 227 N.W. 421, 424 (Iowa 1929); Burns v. Verdes Northwest, L.L.C., 810 N.W.2d 896 (Table) 2 (Iowa 2012).

2. Termination by Agreement. An easement may be terminated by agreement of all parties to the easement.[104]

3. Termination by Merger. An easement is extinguished by the merger of the dominant and servient estates in a single owner.[105]

4. Termination by Abandonment. An easement may be extinguished by abandonment.[106] "In order to prove abandonment, actual acts of relinquishment accompanied by an intention to abandon must be shown."[107] Non-use alone is insufficient to establish abandonment, unless it is accompanied by affirmative evidence of a clear determination to abandon.[108] Non-use could result in the termination of an easement if "it is for such period and under such conditions as to constitute adverse possession."[109] However, "such non-user is subject to explanation, and if it appears that the owner had no intention of abandoning his easement no abandonment will be found."[110]

5. Termination by Issuance of Tax Sale Deed. An easement may be terminated by the issuance of a tax sale deed conveying title to the dominant estate. A tax sale deed conveys "a new and independent title in the nature of a grant from the sovereign which extinguishes all prior claims against the land."[111] Pursuant to section 448.3 of the Code of Iowa, a properly executed and recorded tax sale deed vests in the grantee

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[104] See Ehler v. Stier, 216 N.W. 637, 638 (Iowa 1927) (declaring that once established, an easement cannot be disregarded or set aside except by the consent of all parties concerned); Thompson v. JTTR Enviro, L.L.C., 906 N.W.2d (Table) 3 (Iowa Ct. App. 2017) ("Easements are subject to ordinary contract principles.").

[105] Sundance Land Co., LLC v. Remmark, 8 N.W.3d 145, 153 (Iowa 2024); Gray v. Osborn, 739 N.W.2d 855, 862 (Iowa 2007);

[106] Allamakee Cty. v. Collins Trust, 599 N.W.2d 448, 451 (Iowa 1999).

[107] Town of Marne v. Goeken, 147 N.W.2d 218, 224 (1966).

[108] Sterlane v. Fleming, 18 N.W.2d 159, 162 (Iowa 1945).

[109] Krogh v. Clark, 213 N.W.2d 503, 505 (Iowa 1973).

[110] Presbyterian Church v. Harken, 158 N.W. 692, 696 (Iowa 1916). See National Properties Corp. v. Polk Cty., 386 N.W.2d 98, 106 (Iowa 1986) (quoting Presbyterian Church v. Harken).

[111] Reconstruction Finance Corp. v. Deihl, 296 N.W. 385, 390 (Iowa 1941).

thereunder all of the right, title, interest, and claim of the state and county, and all the right, title, interest, and estate of the former owner.[112] As such, the issuance of a tax sale deed for the dominant estate would appear to terminate easements to which it had been subject.

[112] Iowa Code § 448.3(1) (2025). Notwithstanding the express language of section 448.3, however, Iowa law provides for two interests in real estate that are not destroyed by the issuance of a tax sale deed. First, a tax sale deed does not extinguish the interest of a tax sale certificate holder who had purchased at a tax sale subsequent to the tax sale for which the deed was issued. Iowa Code § 448.3(1) (2025). Second, it does not extinguish restrictive covenants resulting from prior conveyances in the chain of title to the former owner. Id. Aside from those two statutory exceptions, all other interests in the real estate, including easements, are destroyed by the issuance of a tax sale deed. Patterson v. May, 29 N.W.2d 547, 552 (Iowa 1947) (holding that a tax sale deed totally destroys the antecedent estate and vests the grantee thereunder with all of the title and interest of all owners of any estate in the land); Reconstruction Finance Corp. v. Deihl, 296 N.W. 385, 390 (Iowa 1941) (holding that a tax title "is a new and independent title in the nature of a grant from the sovereign which extinguishes all prior claims against the land").