

New Legislation for Rights of Way and Wayleaves.

The Land and Conveyancing Law Reform Act 2009 (the majority of which came into effect on the 1st of December 2009) has brought about many changes to Irish Property Law. In particular, the 2009 Act makes considerable changes to the Law relating to the acquisition of Easements by prescription.

An Easement is the right of a land owner to do something on a neighbour's land or to stop the neighbour from doing something on the neighbour's own land. Examples are rights of way, wayleaves (the running of pipes and services over, through or under land) or rights to light.

Easements will often be specified in the title documents of a property but sometimes are acquired on the basis of usage over a substantial period of time without the express permission of the owner of the land over whom the rights are claimed. Such unregistered rights are called Easements by prescription.

Prior to the 2009 Act coming into force, it was almost impossible for an easement to be extinguished. The person claiming the Easement would have the continued use of the easement and there was no requirement for the easement to be registered. Take the example of a right of way into a field through a gate. If the gate was then locked by the owner of the field then the fact that the right of way was not registered did not prevent the person who had the right of way into the field from demanding that the gate be unlocked or from seeking court protection to ensure the continued benefit of the right of way.

The new rules provide however that an Easement can only be acquired following 12 years open use after the 1st of December 2009. One then has to get a Court Order confirming the existence of the Easement. The Court Order then needs to be registered in either the Property Registration Authority (PRA)

(formerly known as the Land Registry) or the Registry of Deeds, as appropriate.

Additionally, under the new rules an easement can now be automatically extinguished if it has not been exercised for a continuous period of 12 years (except where it is protected by Court Order and subsequent registration in the Registry of Deeds or PRA, as appropriate (as set out above)).

The 2009 Act also has implications for easements currently enjoyed which have not been confirmed by a Court Order or registered against the property in question. Persons enjoying such Easements have a **3 year** transition period in which to complete the necessary qualification period of user under the old law (e.g. 20 years for a right of way) and to apply to the Court for an Order confirming entitlement to the Easement (which should then be registered in the PRA or Registry of Deeds). The deadline in this regard for applying to the Court for existing Easements is the **30th of November 2012**.

Anyone claiming an Easement, or who is aware that their property is subject to an Easement should take legal advice without delay to avoid serious consequences.

For further information please contact Una Barrett.