

Warning To Property Owners: “Neighborly” Accommodations May Result In Losing Property Rights

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As the expression goes: “No good deed goes unpunished.” In the world of real property law, if a landowner, trying to be a “good neighbor”, allows someone to use his or her property, that neighborly accommodation may ripen into a permanent easement-type property interest across the property.



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A recent decision from the California Court of Appeal in *Richardson v. Franc* expanded the legal doctrine of “irrevocable licenses” in a situation where one neighbor simply allowed another neighbor to use a portion of a driveway for landscaping and irrigation. Whereas prior cases applying irrevocable licenses arose from the parties’ oral agreement, in *Richardson* the parties never communicated to each other. The landowner’s knowledge of the use, without assent or objection, was sufficient to create a permanent, easement-like property interest.

Conceptually, a license to use another’s real property differs from commonly-known real property doctrines such as “adverse possession” or “prescriptive easement”, which may allow others to obtain fee title or easement rights based upon use of the property (e.g., 5-years use that is “open, hostile and continuous”). A well-known method to defeat adverse possession is to grant permission to the user, thus negating the required element of hostility.

In contrast to the hostility requirement for adverse possession, a license is premised upon permission. A license gives the user authority to perform an act or acts on your property. Licenses are commonly seen in commercial transactions to allow specifically-defined use of a property. In those situations, the rights, duties and obligations of the parties are set forth in a written license agreement.

In the absence of a written agreement, a landowner may grant an oral (i.e., “parol”) license. Such parol licenses are revocable at any time. The legal doctrine of a parol “irrevocable license” dates back to court decisions in the 1800’s. In theory, an irrevocable license derives from an equitable estoppel, in which a landowner agrees to allow use of the property with knowledge that the user will expend significant funds to improve the property. For example, the classic case involves a neighbor asking the landowner for access over the property to a landlocked parcel; the landowner says yes and the neighbor, relying on the landowner’s agreement, builds a house on the landlocked parcel – i.e., an equitable estoppel that leads to an irrevocable license.

The unique fact of the *Richardson* case is that the parties never communicated to each other. Instead, one party – who already benefited from an easement for ingress and egress over a driveway – installed landscaping and an irrigation system beyond the easement boundaries. The landowner was aware of the expanded use, but never communicated with the neighbor. Years later, the new owner of the property objected to the use, filed suit and lost.

The holding in *Richardson* raises some troubling issues for property owners. For example, if a property owner is aware of certain use, but fails to investigate or object, such inaction may result in a permanent, irrevocable license. *Richardson* arguably puts the burden on landowners, as opposed to adverse users, to ensure that any adverse use, even if by mistake, does not ripen into a permanent, irrevocable license. For example, by statute a landowner may prevent a prescriptive easement by either recording permission or posting signs. Arguably, neither of these code sections would prevent an irrevocable license.

So what is a landowner to do, object and risk a prescriptive easement, or assent and risk an irrevocable license? Unfortunately, *Richardson* injects more uncertainty into the ever-evolving world of property use rights (e.g., easements, licenses and leases).

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