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CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5] (*Part 2 enacted 1872.*)

TITLE 2. ESTATES IN REAL PROPERTY [761 - 817.4] (*Title 2 enacted 1872.*)

CHAPTER 3. Servitudes [801 - 813] (*Chapter 3 enacted 1872.*)

801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial;
18. The right of receiving sunlight upon or over land as specified in Section 801.5.

(Amended by Stats. 1978, Ch. 1154.)

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following that is designed to serve one utility retail customer on the same property, more than one utility retail customer on the same property, one utility retail customer on the same, adjacent, or contiguous properties, or more than one utility retail customer on the same, adjacent or contiguous properties, and is not designed for procurement of electricity by an electric utility:

- (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- (2) A structural design feature, including the following:

(A) Solar racking, solar mounting, and elevated solar support structures, including, but not limited to, solar carports, solar shade structures, solar awnings, solar canopies, and solar patio covers, regardless of whether the feature is on the ground or on a building. Elevated solar support structures include the aboveground superstructure and associated foundation elements that support the solar collectors or other solar energy devices described in paragraph (1).

(B) Any design feature whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(C) Any photovoltaic device or technology that is integrated into a building, including, but not limited to, photovoltaic windows, siding, and roofing shingles or tiles.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

(c) As used in this section, "electric utility" means an electrical corporation as defined in Section 218 of the Public Utilities Code or a local publicly owned electric utility as defined in Section 224.3 of the Public Utilities Code.

(Amended by Stats. 2021, Ch. 235, Sec. 2. (AB 1124) Effective January 1, 2022.)

801.7. (a) When a right-of-way is granted pursuant to Section 801 or 802 to a railroad corporation whose primary business is the transportation of passengers, the grant shall include, but not be limited to, a right-of-way for the location, construction, and maintenance of the railroad corporation's necessary works and for every necessary adjunct thereto.

(b) A "railroad corporation" shall have the same definition as provided in Section 230 of the Public Utilities Code.

(Added by Stats. 1982, Ch. 1553, Sec. 1.)

[802.]

Section Eight Hundred and Two. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

One—The right to pasture, and of fishing and taking game.

Two—The right of a seat in church.

Third—The right of burial.

Four—The right of taking rents and tolls.

Five—The right of way.

Six—The right of taking water, wood, minerals, or other things.

(Amended by Code Amendments 1873-74, Ch. 612.)

803. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

(Enacted 1872.)

804. A servitude can be created only by one who has a vested estate in the servient tenement.

(Enacted 1872.)

805. A servitude thereon cannot be held by the owner of the servient tenement.

(Enacted 1872.)

806. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

(Enacted 1872.)

807. In case of partition of the dominant tenement the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

(Enacted 1872.)

808. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

(Enacted 1872.)

809. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

(Enacted 1872.)

810. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

(Enacted 1872.)

811. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(Enacted 1872.)

813. The holder of record title to land may record in the office of the recorder of any county in which any part of the land is situated, a description of said land and a notice reading substantially as follows: "The right of the public or any person to make any use whatsoever of the above described land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to control, of owner: Section 813, Civil Code."

The recorded notice is conclusive evidence that subsequent use of the land during the time such notice is in effect by the public or any user for any purpose (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is permissive and with consent in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to public use or whether any user has a prescriptive right in such land or any portion thereof. The notice may be revoked by the holder of record title by recording a notice of revocation in the office of the recorder wherein the notice is recorded. After recording a notice pursuant to this section, and prior to any revocation thereof, the owner shall not prevent any public use appropriate thereto by physical obstruction, notice or otherwise.

In the event of use by other than the general public, any such notices, to be effective, shall also be served by registered mail on the user.

The recording of a notice pursuant to this section shall not be deemed to affect rights vested at the time of recording.

The permission for public use of real property provided for in such a recorded notice may be conditioned upon reasonable restrictions on the time, place, and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of a finding of implied dedication.

(Amended by Stats. 1971, Ch. 941.)