

Legal Review



DO YOU KNOW YOUR RIGHTS?

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Ownership of land and buildings often involves the need to exercise rights over or in respect of land belonging to someone else. These rights are known as “servitudes”. The need for servitudes may be obvious (e.g. where it is necessary to pass over someone else’s land to gain access to your own) or not so obvious (e.g. a right to keep a drain in a neighbour’s property to connect your property to the public drain).

It is a fundamental principle of Guernsey law that a servitude cannot exist and therefore be enforceable, unless it has been created by a document which, if it is to be enforceable both by and against successive owners of each property, must be registered at the Greffe.

Servitudes must be distinguished from rights granted by legislation, or statutory rights, approved by the States of Guernsey which enable certain persons or entities to exercise rights on or over property belonging to someone else.

There are numerous examples of the latter, the most obvious being rights for the operators of service utilities (e.g. electricity, water, telecommunications) who are given powers to enter onto property in private ownership in order to install pipes, drains etc. There is usually a procedure involving the service of notice by the utility operator on the owner of the private property and a right to object to the installation of the service media in question by application to the Royal Court. Not surprisingly, it is very rare for any such objections to be made.

Rights are also conferred by legislation to enable persons to enter onto another person’s property; for example the Police in execution of a search warrant.

A distinguishing feature of the rights referred to in this category is that they are not of necessity created with the intention of benefiting property which is an essential feature of a right in the nature of a servitude. Such a right must be a burden on one parcel of land whilst benefiting another parcel.

Notwithstanding the principle that a servitude cannot exist unless created by a document agreed between the respective property owners, there are certain exceptions to the rule. Probably the most obvious of these is where an area of land is land locked so as to be cut off from the public road. In such circumstances, the law states that the land in question must have right of way over the most convenient route to obtain access to the public road. The owner of the land over which the right is exercised is, however, entitled to compensation. If the respective owners cannot agree the route of the right of way, and/or the compensation payable, the Court must decide.

Another situation where rights can be implied, arises when property in single ownership is divided into one or more parcels in separate ownership. In such cases, the law provides that all rights necessary to enable the individual parcels to be enjoyed in their separate state should be implied. From a practical perspective, there is some uncertainty as to the extent of the rights which can be implied in such circumstances and it is much preferred that the rights be created by conventional means in a written agreement.

Another example of rights being implied arose from a case in the early 20th century which was actually appealed to the Privy Council which is the highest Court available to Guernsey. In this case, rain falling on greenhouses resulted in flooding on neighbouring land. The Privy Council held that the neighbour was obliged to receive the rainwater as the flooding resulted from the effects of nature. This does not, however, mean that it is lawful to divert rainwater by artificial means onto someone else’s land.

It can therefore be seen that, as with most rules, there are exceptions, although it is always dangerous to rely on implied rights. If at all possible they should be set out in a written document registered at the Greffe.

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