



Uniform Easement Relocation Act

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The Uniform Easement Relocation Act (UERA) is a model law that states can enact to allow the owner of a property burdened by an easement to relocate it without the consent of the party that is benefited by the easement. An easement is a legal right allowing someone to use or access another person's property without owning it.¹ It's a type of interest in the land that does not involve physical ownership. The person holding the easement, the dominant estate, has certain rights, depending on the easement, to use the land, and the property owner, the servient estate, cannot interfere with those rights.² Easements can be created in different ways. They can be established through a formal agreement and recorded at the local courthouse, by using the land for a specific purpose for a long period of time (known as "prescription"), or by implying that an easement exists based on the circumstances. No matter how the easement is created, most easements are eligible for relocation under the UERA. This fact sheet will provide an overview of the UERA and how it impacts landowners that are burdened by an easement, the servient estate owners, and the parties benefited by the easement, the dominant estate owners.

Background

A common example of an easement would be the use of a strip of land as a driveway to access property that does not have a connection to a road. The easement would allow the dominant estate owner to drive on a designated piece of land owned by the servient estate owner to access their property. In this example the easement has limitations on both parties. The dominant estate owner can only use the servient estate owner's land as a driveway to access their property. They cannot use the easement for any other purpose. The servient estate owner still owns the property, but they cannot do anything to the land burdened by the easement that would restrict or stop the dominant estate owner from using the driveway to access the property.

¹ Unif. Easement Relocation Act § 2 (Unif. L. Comm'n 2020).

² *Id.*

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They cannot build any structures, plant crops or anything else that could impede the use of the driveway.

Easement relocation refers to moving or altering an existing easement to a different location on the property or to a different one altogether. It typically involves modifying the rights and restrictions associated with the original easement while maintaining its intended purpose.

For example, Farm A and Farm B are neighboring properties. Farm B (dominant estate owner) has an easement on Farm A (the servient estate) that allows access to a strip of land for a driveway. Over time, the owner of Farm A plans to build a new barn and expand their farming operations, but this would obstruct Farm B's access to that piece of land.

In most states without the UERA, an easement can only be relocated if both the dominant estate owner and the servient estate owner agree to the relocation. This creates a possibility where the dominant estate owner could abuse this situation.³ In our example, Farm B's owner could prevent Farm A's development by withholding consent to relocate the driveway, even if the relocation had no effect on Farm B's access to their property. Dominant estate owners could use this power to demand substantial concessions before consenting to a relocation.

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The UERA introduces a change to the traditional requirement that both parties must agree to relocate the easement. In cases where the parties involved cannot reach an agreement, the UERA grants the owner burdened with the easement (the servient estate owner or Farm A in our example above) a process to seek permission from a court to relocate the easement without an agreement. Applying the UERA involves a legal action filed at the county courthouse so the servient estate owner needs to notify the parties that have an interest in the property or the easement (Farm B) of the relocation plan. If any parties object to the proposed relocation, they have the right to challenge it in court.

Definitions

To accurately determine how and when the UERA may apply, it is crucial to examine the definition of critical phrases. Below are some of the more important definitions edited for clarity.

- (1) Easement: An easement is a right to enter, use, or enjoy real property (land) owned or in the possession of another. This, however, does not mean the dominant estate now owns the property. They simply have a right to use the property for the stated purpose.
- (2) Dominant Estate: Dominant estates include the estate, person, or real property that benefits from an easement.⁴ In the previous example, Farm B is the dominant estate because Farm B benefits from the easement allowing it to access their property by crossing Farm A's property.
- (3) Servient Estate: A servient estate is the estate that is burdened by the easement. Farm A is the servient estate because they must allow Farm B to cross their property and they cannot interfere with Farm B's right to cross their property.

³ Unif. Easement Relocation Act § 2 (Unif. L. Comm'n 2020).

⁴ *Id.*



- (4) Conservation easement: Legal agreements restricting certain land uses to protect and preserve natural resources, open spaces, or historic properties.⁵ Traditionally these easements prohibit developing the property for commercial or residential purposes.
- (5) Negative easement: Negative easements are legal restrictions that prevent specific actions or uses of a property, typically aimed at preserving scenic views, preventing obstruction of light, or maintaining privacy.⁶
- (6) Public-utility easement: Public-utility easements are legal rights granted to utility companies to access and use a portion of private land to install and maintain utility infrastructure.⁷

Scope and Limitations of the UERA

The UERA does not create new easements. The purpose is to move an eligible existing easement to a different location where it is more convenient for the burdened landowner and not too inconvenient for the party using the easement. The UERA allows for the relocation of an easement without all parties' agreement.

The UERA covers most legally recognized easements. However, it's essential to know that there are three specific situations where the UERA does not apply.

1. Public utility, conservation, and negative easements are not eligible for relocation under this law.
2. The UERA only applies to easements where relocating them would not interfere with existing public utility, conservation, and negative easements.
3. The UERA does not control the relocation of easements established through mutual agreement. If all parties to an easement agree to move the easement then that relocation does not need to conform to the UERA.

All other types of easements not mentioned in the exceptions above can potentially be relocated under the UERA.

Criteria for Relocation

When seeking court permission to move an easement, there are specific conditions that the owner of the burdened property (the servient estate owner) must meet. These conditions are in place to ensure the relocation will not significantly impact different aspects related to the easement and the properties involved.

- The right to relocate an easement is only for the servient estate owner to exercise unless there is a written agreement that gives the dominant estate owner that right.
- The servient estate owner must show that the new location will not make the easement less useful to the dominant estate.⁸
- The new location ensures the original purpose of the easement is achieved.⁹
- The relocation should maintain the safety of everyone using the easement.¹⁰

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*



- Finally, the servient estate owner must show that the relocation will not significantly decrease the value or condition of the property owned by the dominant estate.¹¹

Miscellaneous Provisions

Three other provisions are important to relocating an eligible easement:

- The owner of the burdened property (the servient estate) is responsible for covering all the costs associated with the easement relocation and must ensure that the easement holder's access is maintained without interruption throughout the relocation process.¹²
- Once the court has ruled in favor of the servient estate to move an easement all parties involved must act fairly and honestly during the relocation process.¹³
- The right to move an eligible easement cannot be taken away or limited by any agreement once the UERA has been enacted in a state.¹⁴

Conclusion

The Uniform Easement Relocation Act (UERA) provides a standardized framework for governing and regulating the relocation of easements for those states that enact the model law. Not all easements are eligible for relocation and some easements that may be legally eligible may not be practically possible. For example, if the servient estate owner is unable to afford the relocation process or if there is no other practical place to relocate the easement then the servient estate owner will not succeed under the UERA. Ultimately, the UERA aims to facilitate the relocation of easements in a manner that is reasonable, just, and in compliance with the applicable legal requirements.

¹¹ *Id.*

¹² Unif. Easement Relocation Act § 7 (Unif. L. Comm'n 2020).

¹³ Unif. Easement Relocation Act § 8 (Unif. L. Comm'n 2020).

¹⁴ Unif. Easement Relocation Act § 11 (Unif. L. Comm'n 2020).

