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The 2013 Florida Statutes

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CHAPTER 704 EASEMENTS

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704.01 Common-law and statutory easements defined and determined.—

(1) IMPLIED GRANT OF WAY OF NECESSITY.—The common-law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over her or his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which the person conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

¹(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW RIGHT.—Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists when any land, including land formed by accretion, reliction, or other naturally occurring processes, or portion thereof, which is being used or is desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes is shut off or hemmed in by lands, fencing, or other improvements by other persons so that no practicable route of egress or ingress is available therefrom to the nearest practicable public or private road in which the landlocked owner has vested easement rights. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon

the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof, provided that such easement shall be used only in an orderly and proper manner.

History.—s. 1, ch. 7326, 1917; RGS 4999; CGL 7088; s. 1, ch. 28070, 1953; s. 220, ch. 77-104; s. 1, ch. 91-117; s. 788, ch. 97-102; ss. 1, 2, ch. 2005-214.

¹**Note.**—Section 2, ch. 2005-214, reenacted subsection (2) as it existed prior to amendment by s. 1, ch. 2005-214, “[e]ffective only if a court determines that subsection (2) . . . , as amended by [s. 1, ch. 2005-214], is unconstitutional and such determination is upheld on appeal,” to read:

(2) **STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW RIGHT.**—Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists when any land or portion thereof outside any municipality which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing, or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

704.02 When lands enclosed, person using easement to maintain gates.—When the land on which the statutory easement referred to in s. 704.01(2) shall be in use, or afterwards put to the use of enclosing farm or grove products or livestock, the owner or tenant of the dominant tenement using the easement of the same shall, if no compensation is paid under s. 704.04, when requested by the owner of the servient tenement, erect and maintain either a cattle guard or a gate at each place where said easement intersects a fence. Any such gate is to be kept closed when not opened for passage, and any such cattle guard or gate so erected and maintained shall be in substantial conformity with the character of the fence at such intersection.

History.—s. 2, ch. 7326, 1917; RGS 5000; CGL 7089; s. 2, ch. 28070, 1953.

704.03 “Practicable” defined.—For the purposes of this chapter the word “practicable,” as used in s. 704.01, shall be held and construed to mean “without the use of bridge, ferry, turnpike road, embankment, or substantial fill.”

History.—s. 3, ch. 7326, 1917; RGS 5001; CGL 7090; s. 3, ch. 28070, 1953.

¹**704.04 Judicial remedy and compensation to servient owner.**—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common-law right, objects or refuses to permit the use of such way under the conditions set forth herein or until she or he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. When said easement is awarded to the owner of the dominant tenement, it shall be in compliance with s. 704.01(2) and shall exist so long as such easement is reasonably necessary. The court, in its discretion, shall determine all questions, including the type, duration, extent, and location of the easement, the amount of compensation, and the attorney’s fees and costs to be awarded to either party for unreasonable refusal to comply with the provisions of s. 704.01(2), provided that if either of said parties so requests in her or his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

History.—s. 4, ch. 28070, 1953; s. 2, ch. 91-117; s. 789, ch. 97-102; ss. 3, 4, ch. 2005-214.

¹**Note.**—Section 4, ch. 2005-214, reenacted s. 704.04 as it existed prior to amendment by s. 3, ch. 2005-214, “[e]ffective only

if a court determines that [s.] 704.04 . . . , as amended by [s. 3, ch. 2005-214], is unconstitutional and such determination is upheld on appeal,” to read:

704.04 Judicial remedy and compensation to servient owner.—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common-law right, objects or refuses to permit the use of such way under the conditions set forth herein or until she or he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. Where said easement is awarded to the owner of the dominant tenement, it shall be in compliance with s. 704.01(2) and shall exist so long as such easement is reasonably necessary for the purposes stated herein. The court, in its discretion, shall determine all questions, including the type, duration, extent, and location of the easement, the amount of compensation, and the attorney’s fees and costs to be awarded to either party for unreasonable refusal to comply with the provisions of s. 704.01(2) provided that if either of said parties so requests in her or his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

704.05 Easements and rights of entry.—

(1) The rights and interests in land which are subject to being extinguished by marketable record title pursuant to the provisions of s. 712.04 shall include rights of entry or of an easement, given or reserved in any conveyance or devise of realty, when given or reserved for the purpose of mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials, unless those rights of entry or easement are excepted or not affected by the provisions of s. 712.03 or s. 712.04. However, the provisions of this section shall not apply to interests reserved or otherwise held by the state or by any of its agencies, boards, or departments.

(2) Any person claiming such a right of entry or easement may preserve and protect the same from extinguishment by the operation of this act by filing a notice in the form and in accordance with the procedures set forth in ss. 712.05 and 712.06.

(3) This section is intended, and shall be deemed, to operate both prospectively and retrospectively.

(4) The provisions of this section shall not revive any right or interest that was extinguished by the operation of chapter 712 prior to June 6, 1975.

History.—s. 1, ch. 70-100; s. 1, ch. 73-140; s. 1, ch. 75-94; s. 70, ch. 99-3.

704.06 Conservation easements; creation; acquisition; enforcement.—

(1) As used in this section, “conservation easement” means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:

(a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

(b) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(c) Removal or destruction of trees, shrubs, or other vegetation.

(d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites

or properties of historical, architectural, archaeological, or cultural significance.

(2) Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of the property, or in any order of taking. Such easements may be acquired in the same manner as other interests in property are acquired, except by condemnation or by other exercise of the power of eminent domain, and shall not be unassignable to other governmental bodies or agencies, charitable organizations, or trusts authorized to acquire such easements, for lack of benefit to a dominant estate.

(3) Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving sites or properties of historical, architectural, archaeological, or cultural significance.

(4) Conservation easements shall run with the land and be binding on all subsequent owners of the servient estate. Notwithstanding the provisions of s. 197.552, all provisions of a conservation easement shall survive and are enforceable after the issuance of a tax deed. No conservation easement shall be unenforceable on account of lack of privity of contract or lack of benefit to particular land or on account of the benefit being assignable. Conservation easements may be enforced by injunction or proceeding in equity or at law, and shall entitle the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. A conservation easement may be released by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.

(5) All conservation easements shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

(6) The provisions of this section shall not be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable.

(7) Recording of the conservation easement shall be notice to the property appraiser and tax collector of the county of the conveyance of the conservation easement.

(8) Conservation easements may provide for a third-party right of enforcement. As used in this section, third-party right of enforcement means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, or charitable corporation or trust as described in subsection (3), which although eligible to be a holder, is not a holder.

(9) An action affecting a conservation easement may be brought by:

- (a) An owner of an interest in the real property burdened by the easement;
- (b) A holder of the easement;
- (c) A person having a third-party right of enforcement; or
- (d) A person authorized by another law.

(10) The ownership or attempted enforcement of rights held by the holder of an easement does not subject the holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of the property encumbered by a conservation easement.

(11) Nothing in this section or other provisions of law shall be construed to prohibit or limit the owner of land, or the owner of a conservation easement over land, to voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances, nor shall this section prohibit the use of eminent domain for said purposes as established by law. In any legal proceeding to

condemn land for the purpose of construction and operation of a linear facility as described above, the court shall consider the public benefit provided by the conservation easement and linear facilities in determining which lands may be taken and the compensation paid.

(12) An owner of property encumbered by a conservation easement must abide by the requirements of chapter 712 or any other similar law or rule to preserve the conservation easement in perpetuity.

History.—s. 1, ch. 76-169; s. 1, ch. 86-44; s. 74, ch. 93-206; s. 17, ch. 97-164; s. 7, ch. 2007-204; s. 3, ch. 2009-157.

704.07 Solar easements; creation; remedies.—

(1) Easements obtained for the purpose of maintaining exposure of a solar energy device shall be created in writing and shall be subject to being recorded and indexed in the same manner as any other instrument affecting the title to real property. Solar easements may be preserved and protected from extinguishment by the filing of a notice in the form and in accordance with the provisions set forth in ss. 712.05 and 712.06.

(2) In addition to fulfilling the requirements of law relating to conveyance of interests in land, the instrument creating the solar easement shall include:

(a) A description of the properties, servient and dominant.

(b) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.

(c) A description of where the easement falls across the servient property in relation to existing boundaries and various setbacks established by the local zoning authority.

(d) The point on the dominant property from where the angles describing the solar easement are to be measured.

(e) Terms or conditions under which the solar easement is granted or will terminate.

(f) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) No structure under construction on October 1, 1978, shall be subject to any solar easement recorded pursuant to this section.

History.—ss. 2, 3, ch. 78-309.

704.08 Cemeteries; right of ingress and egress for visiting or maintenance.—The relatives and descendants of any person buried in a cemetery shall have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives and descendants may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants shall have the right to maintain the cemetery.

History.—s. 36, ch. 80-238.