
WHAT DOES THE TERM "RIGHT OF WAY" MEAN?

A right of way arises if you own a piece of land and in order to get to it you must pass over a piece of land or roadway which is owned by someone else.

Rights of Way, also known as easements, makes it easier for one landowner, if they need to get across someone's land to get to their own land.

A right of way could be a laneway, a boreen, a gap in a fence that leads to property owned by someone who does not own the laneway, boreen, gap etc. e.g. a derelict house at the back of a field. This can lead to controversy between both owners.

ARE THERE DIFFERENT TYPES OF RIGHTS OF WAY?

- Rights of Way established by long use
- Rights of Way created by a Document

WHAT IS A RIGHT OF WAY ESTABLISHED BY LONG USE?

Many rights of way were created when a land owner used a piece of land, lane or private road, which belongs to another person, over a long period of time, to get to his property.

The main test to prove a right of way was the continuous use of the land for twenty years or more. Up to now a right of way created by long and continuous use would generally not be registered.

A person who benefits from such a right of way e.g. the farmer who uses an adjoining owner's property to access a remote part of his farm, or a house owner who uses a laneway to access the rear of his house.

WHAT IS A RIGHT OF WAY CREATED BY AGREEMENT?

This situation arises when two land owners get together and agree that a right of way should or needs to be granted to allow one of them to access a piece of property which is landlocked.

This might happen in a situation where a large land holding is being broken up on a sale, or if a farmer is gifting his farm to a child and retaining a small portion for himself.

Quite often if a right of way is being created by deed or agreement the parties to the agreement will include conditions in the agreement for the use of the right of way e.g. if the right of way is over a private roadway it might stipulate that a gate is to be kept locked or there might be a restriction on the exercise of the right of way – e.g. it is for pedestrians only. Once the right of way is agreed and recorded in writing it is usually registered.

HOW LONG DOES IT TAKE TO ESTABLISH A RIGHT OF WAY?

These are by far the more difficult ones. The Land Law and Conveyancing Act 2009 changed the old way of establishing a right of way which was that you had to prove a certain amount of right; in the Courts view 20 years. This method led to difficulties so the 2009 Act tried to simplify the area of rights of way. Since the 2009 Act a person can claim a right of way if s/he can prove that s/he had possession for 12 years.

Under the Land and Conveyancing Law Reform Act 2009 a person had to make a claim for a right of way within 3 years of the introduction of the Act. This could not work in practice as the requisite 12 years would not have passed so an amending piece of legislation was introduced – the Civil Law (Miscellaneous Provisions) Act 2011.

The person who is establishing the right of way must be a user as of right; you have to prove permission and consent by the owner of the laneway etc. to the person who wishes to use it to access his own property. The law helps out by presuming consent where you show continuous use for more than 12 years.

WHAT SHOULD I DO TO MAKE SURE I DON'T LOSE MY RIGHT OF WAY?

If you access your property by using a right of way over another person's land you need to make sure that that right of way is registered with the Property Registration Authority (PRA).

The Land and Conveyancing Law Reform Act 2009 originally provided that farmers had to go to court to register existing rights of way before 30th November 2012 or they could lose their right of way. The Civil Law (Miscellaneous Provisions) Act 2011 extended the deadline for registration until the **30th November 2021**.

There is also a straightforward procedure for registering Rights of Way in cases where all parties agree.

People can now make an application to register the right of way if it is not in dispute. Under the legislation people had to prove 12 years from the date of the Act. Historically, if there was a gap in the 12 years i.e. if there was a period of time during which the laneway etc was not used, you would have to start the time period again.

Under the 2009 Act people don't have to start the time period of use of the right of way again.

It is important for people to realise that for the next 9 years they can apply under the old rules to the Property Registration Authority to register Rights of Way.

If you wait until 2021 you could lose an opportunity and run into unnecessary difficulty.

HOW DO YOU GO ABOUT REGISTERING A RIGHT OF WAY THAT HAS BEEN USED FOR MANY YEARS?

An affidavit must be sworn by the person claiming the right of way setting out as much detail as possible about the right of way, how and when it is used, the details of the land over which it is exercised and the name and address of the person who owns the land. You must also provide the Land Registry with a map identifying the right of way. The fee payable to the Property Registration Authority is €25.00.

The PRA will then notify the owner of the other property concerned and, once the application is not contested, the right will be registered.

If the right of is contested then the parties will have to use a different procedure, which involves an application to the Court seeking a Declaration confirming the existence of the right of way – essentially the court determines whether or not the ROW exists and if it is proven to exist the person claiming the right of way can then go to the PRA to seek its registration.

SEEK ADVICE AND TAKE ACTION

If you are a land owner using a right of way you should look for advice to make sure that your long established rights of way are not lost. Title documents should be checked at the earliest opportunity to find out if your right of way needs to be registered – if you don't do something in time you could lose a valuable asset.

A person's right to travel across land owned by another has caused tension between neighbours for generations.

Known as a 'right of way', it arises if one landowner needs to get through another's land in order to get to his own.

A right of way could be a laneway, a boreen or even a gap in a fence. It might be created over a piece of land you own without your knowledge.

HOW DOES SOMEONE COME TO HAVE A RIGHT OF WAY?

A right of way can be created by either an agreement or by what is termed prescription or 'long use'.

The first method is the simpler of the concepts and basically means that two land owners get together and agree that a right of way should or needs to be granted to allow one of them to access a piece of property. They both sign a document as evidence of the right of way.

The second method, by long use, is a common and contentious form of creation and the main test to prove a right of way by long use is the continuous use of the land for 12 years or more.

A person who wants to establish a right of way by this method must use the route without force, without secrecy and without oral or written consent of the landowner.

HOW TO KNOW IF A RIGHT OF WAY EXISTS ON MY LAND?

If the right of way was created by agreement, there should be a paper-trail showing it in your title documents. These may be held by your solicitor or mortgage provider.

If the right of way, created either by agreement or long use is registered, then it can be seen by requesting a copy of your property's folio from the Property Registration Authority.

Up until recently, rights of way developed by long use were generally not registered and so may exist unregistered.

If you are concerned that a right of way might exist over your land, you should speak with your solicitor.

I HAVE AN UNREGISTERED RIGHT OF WAY. SHOULD I REGISTER IT?

Yes, and soon.

The reason for this is that under the changes brought in since 2009, a right of way can be registered (if the affected landowner does not object) without need for court approval only until the 30th of November 2021.

As such, while a substantial application is still needed at present to have a right of way registered, it will become more burdensome after this 2021 date when the proofs will be more difficult and a court order may also be needed.

The benefit of registering a right of way is that it is protected from becoming extinguished. It will also be extremely helpful if you choose to sell your house in the future as a new purchaser will almost certainly want the right of way registered.

HOW TO STOP SOMEBODY GETTING A RIGHT OF WAY

A right of way can only be registered if it is used without secrecy, without force and without permission.

A letter of consent or a licence, given periodically to the person using your land can therefore act as a written permission and help prevent someone establishing a right of way.

If you are worried about someone developing a right of way then you should speak to your solicitor about it for detailed advice.

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