

Laurel Thicket Property Owners Association

Understanding the Easement created for Driveways and Culverts

Definitions & Abbreviations

LTPOA: Laurel Thicket Property Owners Association

C & Rs: Covenant & Restrictions of the Association

Easement Owner: The landowner (LTPOA) having an easement on their land.

Easement Holder: The party with access to the land (homeowner) for a specific purpose.

Ingress/Egress: Entering and exiting.

What is an Easement by Necessity?

- An easement by necessity is a common type of easement. It is created by law, meaning it is not created by a specific promise or agreement, but **the law implies its existence to achieve just results.**
 - ❖ Example: An easement by necessity is created where two parties own separate parcels of land that adjoin each other in such a way that one of the parcels is landlocked or cannot be accessed except by traveling through the other parcel. In these circumstances, the law creates an easement by necessity.

How does an Easement by Necessity work?

- The owner of the land (LTPOA) over which the easement runs still owns all the land and may use the part of that land over which the easement runs *for any purpose that does not unreasonably interfere with the easement holder's* (property owner's) *rights.*
- If the easement allows the easement holder, (property owner), to drive a car across the easement, the landowner (LTPOA) can also drive cars across the easement area.
- However, the landowner (LTPOA) cannot introduce some barrier that would directly **prevent the easement holder from using the easement for its intended purpose.**

The Easement by Necessity in Laurel Thicket

- The 3-foot rule: Residents of Laurel Thicket often suggest that the property owned by the POA is “3 feet from the road” although, this is not accurate. Property between the road and the property of the lot as recorded by Lee County, NC is LTPOA common property. It can vary a lot. It is approx. 3 feet in many areas, but there is nothing written in the covenants to suggest this 3-foot understanding has any validity beyond being a rough idea in many locations.
- Homeowners do not own property ALL the way to the road, therefore an Easement by Necessity exists on the land between the roadway and the homeowner's property line at the location of the driveway.
- There is language in LTPOA Covenants about other easements related to utility companies, but no explicit language regarding the ingress/egress easement that exists at driveways.
- Any culvert pipe or driveway installed on POA property is an improvement made on land for which the POA has implicitly granted an “easement by necessity” to allow ingress/egress.

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How does this apply to driveways in LTPOA?

➤ Rights and Responsibilities of the easement holder (LT Property Owner)

- The property owners may construct and improve a driveway over the easement.
- The property owner is responsible for paying the costs of all construction, maintenance, **and repair** of any improvement made on LTPOA property.
- The property owner has a duty to maintain the improvement.
- Property Owners do not become owners of the land attached to their easements

➤ Rights and Responsibilities of the easement owner (LTPOA)

- LTPOA is also permitted access and use of any improvement on LTPOA property.
- LTPOA, *has no duty or obligation to maintain or repair the easement's improvements.*
- LTPOA may improve and repair their easements including clearing brush **paving/repaving a road.**
- LTPOA, within limits, retains most rights over the easement.
- LTPOA cannot interfere with the homeowners use of the easement.

How does this apply to culvert pipes under driveways in LTPOA?

The rights and responsibilities regarding driveways also extend to culvert pipes installed under driveways.

Additionally, LTPOA C & Rs state:

Included is the responsibility of each property owner of an improved lot with a driveway and culvert to maintain that culvert as a free running watercourse. Property owners are also responsible for maintaining clean ditches that readily allow water runoff.

How does this apply to ditches in front of your property?

The paragraph above from the LTPOA C & Rs affirms the responsibility of the homeowner to maintain the culvert as a “free running water source” AND it also includes “maintaining clean ditches that readily allow water runoff”. This would indicate that the homeowner is responsible for removing debris that collects in the ditch. This debris would include but is not limited to leaves, sticks, pine straw and cones, trash and any other material that impedes water flow.

The Roads Committee along with the Laurel Thicket Property Owners Association Board of Directors can and should from time-to-time assess the efficiency and functionality of the ditches to determine whether improvements need to be undertaken to ensure proper waterflow as designed.

Historically, the LTPOA has included ditch cleaning as part of the stick and leaf pick-ups even though the covenants state that this is an individual homeowner’s responsibility.

There are additional subjects regarding stormwater management that need to be clarified to insure a clear understanding for all property owners.

Further information will be shared regarding water flow issues.