

The right way forward

DO you have to travel over a secondary road, boreen or laneway to gain access to your home or lands? If so, this article may be of interest to you.

Many secondary roads and boreens are maintained by the local authority and so one assumes that the local authority owns the road. However, this is not always the case. These roads are often owned by the adjoining landowners. Therefore, without knowing it, you may be travelling over someone else's property to gain access to your home or lands.

Prior to the Land and Conveyancing Act 2009, all that was required to establish a right of way over these roads was proof of at least 20 years continuous use. The majority of right of ways in Ireland were not granted in writing but were acquired by long usage (the legal term is 'prescription').

If you were selling your home or land, you would furnish the buyer with a sworn statement that the property being sold had been accessed via this roadway for more than 20 years. Such declaration was generally accepted as sufficient evidence of the existence of the right of way.

With the passing of the 2009 Act, the rules changed completely. These prescriptive rights no longer exist in law. To secure your right of way, the

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registration in the Land Registry (or the Property Registration Authority (PRA) as it is now called) of a written grant of right of way or a court order is needed.

This has led to many difficulties for people wishing to sell or mortgage their property. The court route is expensive and time consuming, and the requirement to seek written right of ways has led to conflict between neighbours where no conflict had arisen before then.

In my experience as a solicitor,

I have seen a number of sales fall through because the person selling was unable to obtain written right of ways from their neighbours.

The lawmakers had not intended the act to cause such problems for landowners and so some improvements have been made following the passing of The Civil Law (Miscellaneous Provisions) Act 2011 which has provided new procedures to enable a person whose property had previously enjoyed a prescriptive right to

register this right in the PRA without the need to seek written grants of right of ways from their neighbours or apply to the court for a formal order.

The process involves preparing and lodging a very detailed application with the PRA. This application should set out how and when the right of way was used, the details of the land over which the right is exercised and the names and addresses of the person(s) who own the roadway. A map must also be submitted with the application.

If the PRA are satisfied that the contents of the application are in order, it will then send a notice to the owners of the lands over which the right of way is claimed and if they do not object, then the PRA will register the right sought.

If you are in any doubt regarding access to your property and intend selling it or mortgaging it in the future, you should ensure that the road is in charge of the local authority. This can be done by sending an ordnance survey map identifying the road together with a cheque for €100 to Cork County Councils office in Skibbereen where they will be able to tell you if the identified road is in charge of the local authority. Alternatively, you should contact your solicitor who may be able to confirm this for you.

Should you have any suggestions for a Legal Eagle article, please send them to Dunne Solicitors by email at Jacquelyn@dunnesolicitors.ie or by post at Dunne Solicitors, Ballyshonock, Kildorrery; or phone 086 1617418