**Chapter 36 Easements, Restrictions, and Zoning Regulations**

1. An easement may be created by grant by using the same formalities required of a deed. An easement may be created by reservation by reserving in a deed an easement for the person who is conveying the property away.

2. B is the dominant tenement and A is the servient tenement.

3. An easement by prescription is obtained by using the property of another openly, notoriously, continuously, and adversely for the statutory period, which is 20 years in many states. Owners may prevent others from obtaining easements by prescription by interrupting the continuous use of the premises by the one attempting to gain the easement.

4. Restrictions come about in the following ways: (a) large parcels of land are divided into lots under a general building scheme and restrictions are placed on the use of the land, and (2) land owners convey away part of their land and impose restrictions on either the land conveyed out or the land retained.

5. A restrictive covenant in a deed will be binding on all future transferees if it is appurtenant to the grantor's remaining land and provides some benefit to that remaining land.

6. The land that is benefited by the restrictions is called the *dominant estate*. The land that bears the burden of the restrictions is known as the *servient estate*.

7. Restrictions based on race, religion, or national origin are void.

8. Restrictions on real property will not be enforced by the courts when they become obsolete such as when a material change has occurred in the neighborhood or when the continuation of the restriction would impede the use of the land for which it is best suited.

9. A nonconforming use cannot be enlarged or changed and will be terminated by nonuse for a particular period of time.

10. To obtain a variance, it must be shown that strict enforcement of the zoning law would cause substantial hardship, and the granting of a variance would not cause a substantial detriment to the public good or would not substantially derogate from the intent and purpose of the ordinance or bylaw.

# Understanding Legal Concepts

1. F, servient 6. T

2. F, can be 7. T

3. F, openly, notoriously, continuously, and adversely 8. F, ordinance

4. T 9. T

5. T 10. F, appeals

# Checking Terminology

1. c 6. n 11. h 16. x 21. g

2. w 7. t 12. u 17. k 22. w

3. b 8. a 13. e 18. z 23. v

4. m 9. q, r 14. f, s 19. j 24. i

5. l 10. d 15. p 20. o

# Using Legal Language

When Opal sold a portion of her real property to Oliver to build a house on, she **granted**—that is, conveyed—to him a(n) **easement**, which is also called a(n) **right of way**, to allow him to drive across one side of her remaining land. In addition, she included a(n) **reservation** in the deed, allowing her to drive across his land. In this latter instance, Opal was the **dominant** tenement, and Oliver was the **servient** tenement. Because a neighbor had been driving across the other side of her land openly, notoriously, and continuously for more than twenty years, the neighbor had obtained a(n) **easement by prescription**. This was not a(n) **easement by necessity** because it was not indispensable to the enjoyment of the dominant estate. Opal placed **restrictions**, which are also called **restrictive covenants**, in the deed stating that no pigs could be raised on the lot. Because the lot was **appurtenant** to—that is, touching and concerning her remaining lot—it was not merely a(n) **personal covenant**, which would have bound Oliver only and would not have run with the land. Opal's remaining land was the **dominant estate** because it was benefited, and Oliver's land was the **servient estate** because it bore the burden of the restriction. A zoning law, called a(n) **bylaw** in a town or a(n) **ordinance** in a city, was in effect that required house lots to be larger than the one involved here. Oliver could not claim a(n) **nonconforming use**—that is, a use already in existence—but he was able to prove a hardship and obtain a(n) **variance**, which allowed him to build on the smaller lot, because it did not substantially **derogate**—that is, take away from—the intent and purpose of the law.

**Puzzling Over What You Learned**

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*Caveat:* Allow squares for spaces between words and punctuation (apostrophes, hyphens, etc.) whenfilling in crossword.

**Across**

1. The act of keeping back.

1. Conveyance.
2. An exception to the zoning regulation.
3. An easement that benefits a particular tract of land.
4. The process of regulating the use of land.
5. A law enacted by a city.
6. Land that bears the burden of a restriction or easement.

**Down**

1. Right to use the land of another for a particular purpose.
2. Parcel.
3. One who enjoys an easement and to whom it attaches.
4. Easement that is not attached to any parcel of land but is a personal right.
5. One on whom an easement is imposed.
6. Easement that allows the dominant tenement to remove something from the property.
7. Limitations on the use of real property.
8. Belonging to; touching and concerning; annexed.
9. Take away from.