

Neighbor Issues: Snow Removal, Repair and Maintenance on Shared Driveways

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Unfortunately, the term "shared" is such an inexact state of being and only through first deciphering how the driveway is actually owned can the mutual obligations for maintenance be precisely determined.

To force your neighbor to share in the upkeep and maintenance of a driveway or, better yet, to force your neighbor to pay for the entirety of the driveway maintenance is a complex proposition. To do this, you should first look to the deeds for all of the properties sharing the driveway. Typically, the deeds will show how the driveway is owned. There is only a true sharing of the driveway when there is a separately deeded right for the ownership of the driveway, in addition to both neighbors' ownership of their individual properties, and as such, the driveway is titled in the neighbors as tenants-in-common or joint tenants. In this situation the driveway can be thought about in the same terms that one would view a lobby of a condominium with respect to ownership responsibilities and permissive use.

The typical shared driveway is not generally owned by both neighbors jointly, as previously described, but instead, one neighbor usually owns the driveway while the other neighbor will hold an easement to use the driveway, or a right of way over such driveway. Here, the owner of the driveway is considered to have the servient estate whereas the easement-holder is considered to have the dominant estate. The dominant estate has rights that exist on top of that of the property owner who must, in turn, moderate his own rights for the purpose of serving the dominant's intended use. In consequence to the owner's subordinated rights, and as New York's highest court has [explained](#), "ordinarily, a servient owner has no duty to maintain an easement to which its property is subject." Instead, the servient landowner only has a passive duty not to interfere with the rights of the dominant easement-holder. As a result, maintenance and snow removal would typically fall on the shoulders of the easement-holder (a.k.a dominant estate), by default, who has a corresponding duty to keep the easement in sufficiently good repair so as to avoid harm to the servient landowner's property.

A properly drafted deed should obviate the need to understand these default rules because such a deed should spell out the respective duties and limitations of the parties' rights with respect to the driveway. The deed should go so far as to speak in terms of the specific maintenance obligations of each neighbor by explaining if the dominant estate-holder's rights are just to use the easement as a passageway, or, instead, if the dominant estate-holder can maintain the easement with such things as plantings, fencing, paving, etc.

A properly drafted deed should allocate the costs and decision-making powers of the neighbors so that there is no ambiguity as to the neighbors' ability to co-exist into the future. More particularly, the deed should unequivocally state if the servient landowner is completely excluded from use of the driveway existing for the benefit of the easement-holder, or if both the servient and the dominant estate can use the driveway in a shared manner. The latter being the default rule if the deed is silent as to this issue. In such a situation and absent an express agreement to the contrary, all persons benefited by an easement must share ratably in costs of its maintenance and repair.

Assuming that both the servient and dominant estates actually utilize the driveway, the ownership rights will be looked at as an easement-in-common by a court when allocating the costs of maintenance. As a consequence either neighbor can take initiative to maintain the driveway. However, a neighbor can only look to the other to share ratably its repair if that neighbor, who is undertaking the repair, gave the other neighbor both adequate notice of the repair

issue sought to be addressed and a reasonable opportunity to participate in deciding how the repair is made. Thereafter, the neighbor, who is undertaking the repair, must ensure that the repairs were performed adequately, properly and at a reasonable price. Failure by the neighbor, who is undertaking the repair, to satisfy any of these obligations will prove fatal in any subsequent claim upon the other neighbor to share in the cost of maintenance of their shared driveway.

If you don't have an agreement concerning the maintenance of a shared driveway with your neighbor, before going to court, you should invite your neighbor to enter into such a private agreement and thereafter file it with the deed, at the county clerk's office, as a covenant and restriction that runs with the land. This type of agreement will not only avoid your instant conflict with your neighbor, but it will also prevent future neighbors who are living at your properties from existing with the same type of ambiguity, as to the rights and responsibilities for driveway maintenance, that created your conflict in the first place. As a consequence, it will enhance your property's value.

Adapted from this [Lieb Blog](#) post

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