

Can One Co-Owner Grant an Easement to a Third-Party?

Posted on [May 4, 2020](#) by [tiffany.dowell](#)

Question: Can one co-owner of property grant an easement to a third party or is consent from all co-owners required?



Photo by Irina Iriser from Pexels

Answer: “It is well settled that a tenant in common cannot, without the precedent authority or subsequent ratification of his cotenants, impose an easement or dedication upon the common property in favor of a third party.” *See Tex. Mortg. Co. v. Phillips Petrol. Co.*, 470 F.2d 497 (5th Cir. 1972) (applying Texas law). In other words, without the consent of all co-owners, or their subsequent agreement to the terms of an easement, one co-owner may not grant an easement burdening the jointly owned land to a third party. *See Elliott v. Elliott*, 597 S.W.2d 795 (Tex. App. – Corpus Christi 1980) (“Absent consent or subsequent ratification by the other cotenants, the general rule is that one co-tenant cannot impose an easement upon the common property in favor of third persons.”).

In *Lee v. Phillips Petroleum Co.*, 329 F. Supp. 579 (S.D. Tex. 1971), the court addressed this issue in the context of competing pipeline easements. Korge and Turner each owned an undivided one-half interest in the property at issue. In 1956, Korge entered into an agreement with Phillips Pipeline Company (“Pipeline”) that allowed Pipeline to construct a single line across the land. Two days later, Turner entered into an agreement with Phillips Petroleum Company (“Petroleum”) allowing Petroleum to lay a pipeline or pipelines across the land. Later that year, Mr. Lee purchased the Korge interest in the land and the following year, he purchased the Turner interest, making him the sole owner.

Ten years after he purchased the property, Petroleum sent a letter to Lee seeking to construct an additional pipeline on the land. Lee would not agree, and Petroleum entered the land and began construction over his objection. Lee filed suit against Petroleum for trespass to try title claiming the Turner easement was invalid.

The court agreed, finding the Turner easement sought to convey greater rights than were allowed by the Korge grant, which could not be done by one cotenant. “In sum, as defendants failed to receive a multiple-line grant from the Korge cotenants, the multiple-line grant which Petroleum did receive from the Turner group was ineffective to bind the *joint* estate of the two sets of grantors.” Thus, Mr. Lee had the right to essentially step into the shoes of the Korge owners and oppose the construction of the second pipeline.

Key Takeaways: For anyone involved in the grant of an easement—whether as the person granting the easement or the person seeking the easement—it is critical to ensure the correct parties have signed off on the easement in order for it to be valid. Taking the time to do your homework to determine the legal owners of the property and to obtain the required consent or ratification is time well spent to avoid a legal challenge to the grant of an easement later.

For more information on easements, check out our chapter on Access to Property in our [Owning Your Piece of Texas](#) handbook or listen to our [prior podcast](#) on easements and landlocked property with James Decker.