

## **4.0 Side Yard Easements**

### **Revised: 7/2016**

In accordance with the Article XIV, Side Yard Easements, of the PC&Rs the Board has established a policy for windows and doors installation and replacement which encourages maintaining privacy for our homeowners. A written request on the San Elijo Hills I HOA Architectural Approval Request Form must be submitted to the Architecture Committee and a written approval received BEFORE any changes to windows or doors are made.

### **4.1 Rights/Responsibilities**

Definition of terminology includes: Easement- a right to use someone else's property for a certain specified purpose. The person who holds the right to use another's property is said to hold the "dominant tenement", while the person whose property is subject to the other's use is said to hold the "servient tenement." In San Elijo Hills the easements were created by deeds.

4.1.1 Rights of the Servient Tenement Owner. Article XIV of the PC&Rs provides that the servient tenement can, at all reasonable times enter the easement area to perform any work necessary for the maintenance of the servient tenement owner's home and can cross over the dominant tenement's yard to do so. The servient tenement owner of the lot may also drain water over, upon or across the easement area (with certain limitations), and that the owner of the dominant tenement cannot do anything on the easement area which interferes with the servient tenement owner's drainage across the easement area. The owner of the servient tenement lot may also seek judicial relief preventing the owner of the dominant tenement lot from attaching anything to the servient tenement owner's walls or buildings. The servient tenement owners can place in the easement area, roof overhangs, eaves, rain gutters, cable lines, etc. provided such items are at least 7 feet above surface grade.

At San Elijo Hills, the side yard easements are strictly for recreational and gardening use. While the owner of the dominant tenement may place patios, patio slabs, irrigation, etc. on the portion of his neighbor's lot which is subject to the easement, the owner of the dominant tenement may not use the easement for any "permanent installation of any sort, such as a swimming pool...plumbing installations (other than sprinklers), or recreational sports equipment and facilities..." Article XIV.

In making entry, good sense dictates as much advance notice as possible, though there is no law or provision of the easement which dictates how much notice, or whether such notice must be in writing. Further, good sense dictates that no entry is attempted where to do so would result in a breach of the peace. If two owners are so much at odds with each other that they cannot agree on when an entry may take place, then perhaps the owners should be encouraged to mediate such disputes. San Diego Mediation Center offers a low-cost, fast mediation session well-suited to this type of dispute. If this fails, the owners may be forced to resort to litigation to define rights of entry.

Liability of Dominant Tenement Owner for Damages Caused by plantings in the Easement. A person injured by another's tree roots has three possible remedies: get an injunction from the court, ordering the owner of the tree to control the roots, sue for damages for the injury caused by the roots, or "self-help" (severing the roots at the property line (in this case, at the edge of the easement.) The ability to indulge in self-help, however is tempered by the doctrine of reasonableness: whatever self-help the injured owner indulges in must be reasonable in light of the actual damage. Thus, he cannot cut-off a root and kill the tree if lesser means of control are easily available.

## **4.2 Windows**

Any changes or additions to windows on the servient tenements side of any home shall follow the existing size and placement of windows according to the original design and intent of the home.

4.2.1 Larger windows or windows placed at a different level on the servient tenements side will only be approved on homes without the dominant/servient (zero-lot-line) situation and with a solid fence erected between both affected properties.

## **4.3 Doors**

Doors will only be approved on homes without the dominant/servient (zero-lot-line) situation and with a solid fence erected between both affected properties.

## **4.4 Decks**

Second story decks on servient tenement owner's structure must be no closer than 15' from dominant tenement owner easement side of the structure to provide privacy for the dominant tenement side-yard, unless other privacy features can be provided.