

GOOD FENCES MAKE GOOD NEIGHBORS

Resolving Easement, Title and Homeowners' Disputes

Gideon Kracov, Esq. – ADR Services, Inc. Zachary Schorr, Esq. – Schorr Law, APC Stephanie Goldstein, Esq. - Schorr Law, APC





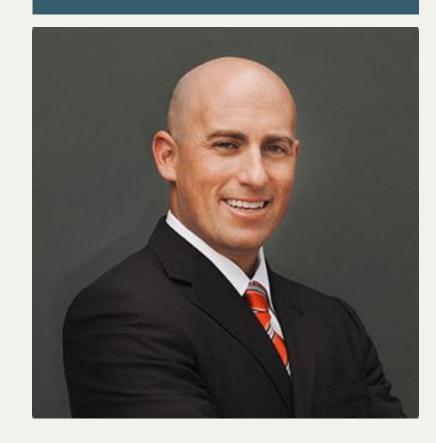
Speakers





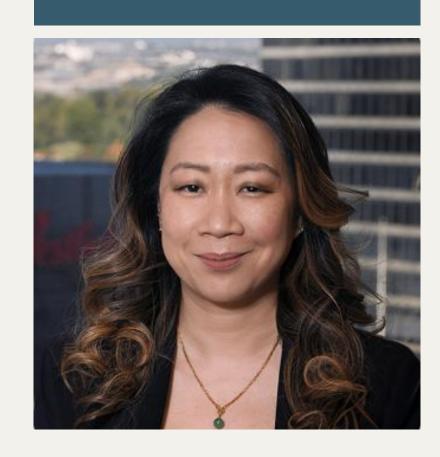
ADR Services, Inc.

Zachary Schorr



Schorr Law, APC

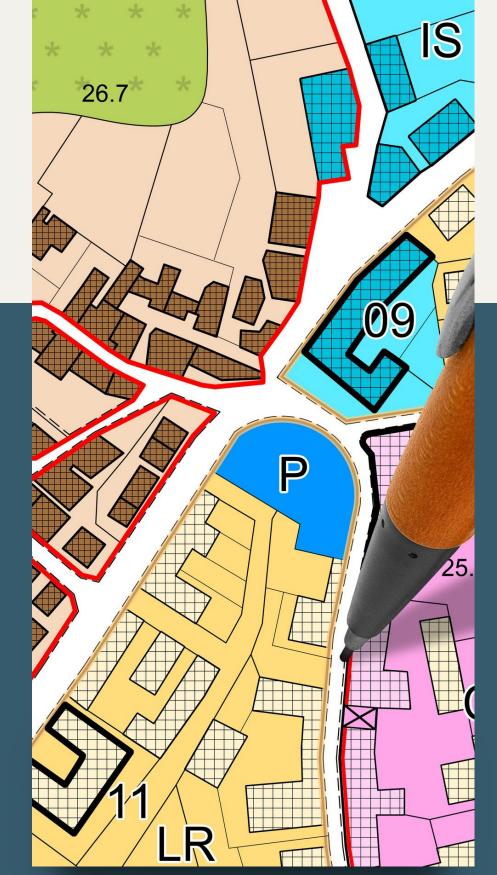
Stephanie Goldstein



Schorr Law, APC









Agenda

Easement Refresher

- Assessing Easement
 Matters
- Easement Litigation Tips

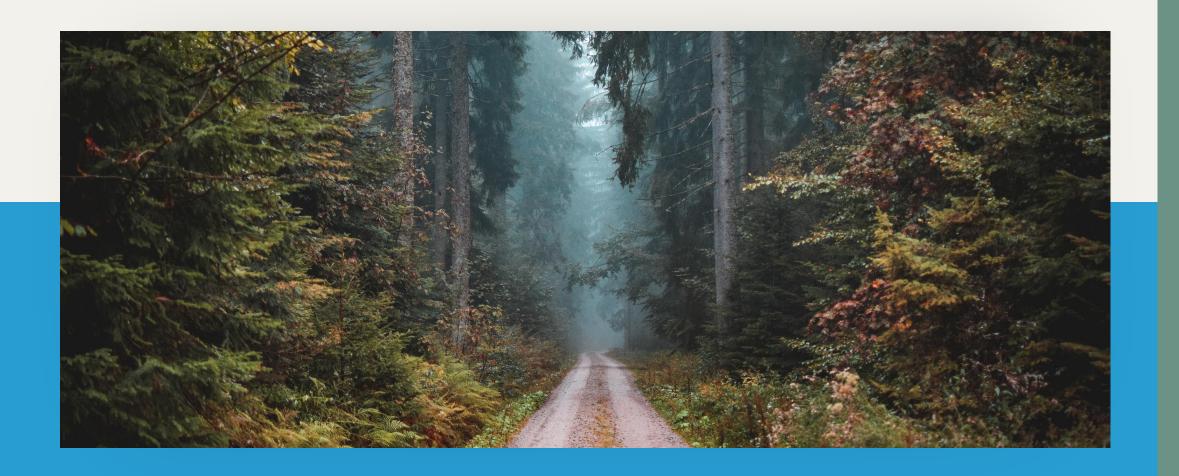
Handling Quiet Title Litigation

- Title Insurance: Policy Review and Claims
- Homeowners'
 Association Disputes
- Alternative Dispute
 Resolution and
 Settlement Strategies



Refresher On Types of Easements

"An easement creates a nonpossessory right to enter and use land in another's possession and obligates the possessor not to interfere with the uses authorized by the easement . . . Easements may be created by an express grant, an implied grant, or by prescription." (Batta v. Hunt, (2024) 106 Cal. App. 5th 295, 304-305; Cal Civ. Code §§ 845, 1008.)



Recorded Implied

(Romero v. Shih (2024) 15

Cal.5th 680)

Equitable

(Hirshfield v. Schwartz (2001)

91 Cal. App.4th 749)

Prescriptive Necessity

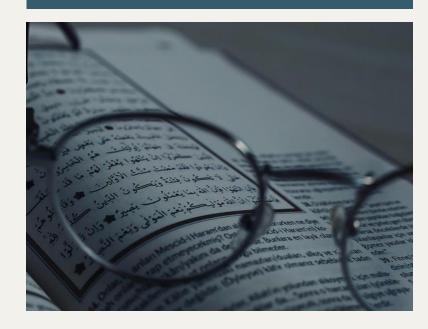


How to Assess Easement Matters

Mapping and Use of Experts



Scope and Interpretation of the Easement



Repair and Maintenance
Obligations





Easement Litigation Tips







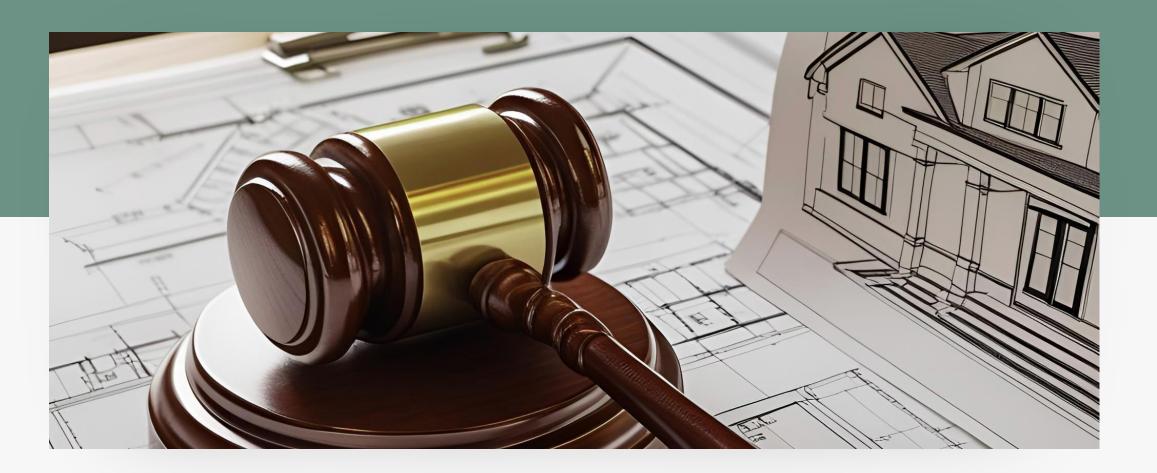
Law and Motion Advice



Remedies and
Enforcement
(injunctions, damages,
overcoming Ev. Code §
662, etc.)

Quiet Title Litigation and Lis Pendens Practice

An umbrella term for an action to determine adverse claims to property. It is used to assert a wide variety of underlying claims and establish any kind of title or interest, legal or equitable in real or personal property. *Golden West Baseball Co. v. Anaheim* (1994) 25 CA 4th 11, 40.





Filing, Recording and Service (Code of Civil Procedure § 760.010, et. seq.)

Removing The Lis
Pendens

Consequences for the Loser



Title Insurance Tips

Reviewing the Policy and Exceptions



Submitting Title
Insurance Claims and
Working With the
Insurer



Scope of Coverage:
Affirmative or Defensive





The Difference Between ALTA and Standard Title Insurance Policies

ALTA Policy

Insurance coverage forever ••

zoning law ** •• Forced removal of a structure because of a violation of a restriction in Schedule B •• Forced removal of a structure which encroaches onto another property or an easement •• Unrecorded easements •• Boundary walls and fence encroachment ** •• Access-Vehicular & Pedestrian based on legal right •• Access - Actual vehicular & Pedestrian access •• Map, if any, not consistent with legal description •• Mechanics' liens •• Inability to use land for single family dwelling because of a violation a zoning ordinance or restriction in Schedule B •• Pays rent for substitute land or facilities •• Rights under unrecorded leases •• Plain language •• Building permit violations** •• Compliance with Subdivision Map Act, if any** •• Restrictive covenant violations •• Covenant violation resulting in reversion •• Enhanced marketability •• Violations of building setbacks •• Discriminatory covenants •• Post

Policy forgery · Post Policy encroachment · Standard Policy

Post Policy damage from minerals or water
extraction •• Post Policy living Trust
Coverage for Trustee •• Post Policy
living Trust Coverage for Beneficiary
••Post Policy automatic increase in value up to 150% •• Post Policy
adverse possession •• Post

Unmarketable title •• Someone else owns an
interest in your title •• Improperly executed documents ••
Defective recording of any document •• Pre-policy forgery,
fraud and duress •• Undisclosed restrictive covenants ••
A lien on your title because of a security deed, judgment,
tax or special assessment, or a charge by a
homeowner's association ••

Policy cloud on title • Post Policy prescriptive easement

**Subject to a deductable and maximum indemnity liability, which may be less than the policy amount



Homeowners' Association (HOA) Disputes

Types of Cases



Maintenance and repair



Alleged malfeasance by HOA



Enforcement of covenants, conditions and restrictions (CC&Rs)



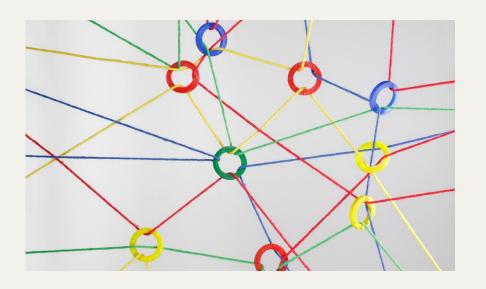
Assessments

- Consult the David Stirling Common Interest Development Act (Civ. Code § 4000, et seq. and Corporations Code § _)
- Interpreting CC&Rs
- The "Business Judgment" Rule [Lamden v. La Jolla Shores Clubdominium Homeowners Association (1999) 21 Cal.4th 249)]
- ADR Rules
- Role of Insurance



ADR and Settlement of Real Estate Disputes





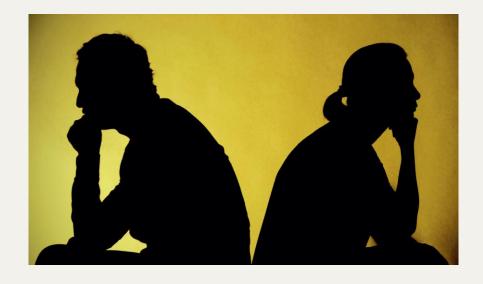
Mediating With Multiple Parties



More Issues, More Currency



What is Below the Iceberg



Transforming
Relationships and Early
Mediation



Choices, BATNA and WATNA



Term Sheets and Documenting the Deal



Thank You.





Gideon Kracov



ADR Services, Inc. gkracov@adrservices.com

Case Manager: Chelsea Mangel chelseateam@adrservices.com

Zachary Schorr



Schorr Law, APC zschorr@schorr-law.com

Stephanie Goldstein



Schorr Law, APC sgoldstein@schorr-law.com

