GRAND PARK LAW GROUP
A PROFESSIONAL CORPORATION

WESTSIDE TOWERS
11835 W. Olympic Boulevard #870E
Los Angeles, California 90064

O:+1 888.629.4754
F: +1 310.900.0805

PRACTICE GUIDE · REAL PROPERTY

Easements, Boundaries, and Encroachments

Grand Park Law Group · 2026



A. Express, Implied, and Prescriptive Easements

Express easements arise from a written grant or reservation, typically recorded, and are construed under contract principles.

Implied easements arise from the prior use of a single parcel later severed, where the use was apparent, continuous, and reasonably necessary for the enjoyment of the dominant tenement. They are creatures of intent inferred from the circumstances of the original conveyance.

Prescriptive easements require open, notorious, continuous, and adverse use for five years, but unlike adverse possession, **no payment of taxes is required** because no fee title is acquired. *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1251, confirms the elements and emphasizes that the use must be incompatible with the rights of the true owner — not merely permissive. A prescriptive easement that would be tantamount to **exclusive use** (e.g., fencing in a neighbor's strip and using it as a backyard) is generally not available, because it would amount to an end-run around adverse possession's tax-payment requirement. *Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305–07.

B. Equitable Easement and the Hirshfield Balancing Test

When an encroachment cannot be cured by a prescriptive easement (often because the use was permissive or the tax element fails), courts may impose an **equitable easement** in lieu of injunctive removal. *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 759, articulates the three-part test:

1. The encroaching party must be **innocent** — the encroachment was not the result of willful conduct;
2. The owner must not suffer **irreparable injury** from the encroachment; and
3. The hardship to the encroacher from removal must be **greatly disproportionate** to the hardship caused to the owner by the encroachment's continuance.

If the test is satisfied, the court may award damages — typically the diminution in value of the burdened parcel — and refuse the mandatory injunction. *Hirshfield* remains the leading case and is regularly cited for the proposition that the balance must tip "decidedly" in the encroacher's favor; an even balance defeats the doctrine.

C. Boundary Disputes and Agreed Boundaries

The doctrine of **agreed boundaries** allows neighbors to fix an uncertain boundary by agreement (express or implied from acquiescence), which becomes binding even if a later survey reveals the true line elsewhere. *Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1303–04, narrows the doctrine: in modern California, where surveys are generally available and recorded, courts disfavor the doctrine and require clear evidence of (1) uncertainty as to the true line, (2) an agreement fixing the line, (3) acquiescence for the statutory period, and (4) the line being identifiable on the ground. A long-standing fence is **not by itself** sufficient.

D. Encroachment Removal and Damages

Where the *Hirshfield* test fails, the remedy is **mandatory injunction** — removal of the encroaching structure — plus damages for trespass and any consequential losses. Damages are typically measured by rental value during the period of encroachment, plus any diminution in value caused. Punitive damages are available where the encroachment was willful, particularly in self-help fence-moving cases.

Practice	Real Property
Topics	Easements · Damages
Publication	Practice guide · Chapter III · 2026

Available online at realproperty.grandparklawgroup.com/articles/easements-boundaries-and-encroachments. This publication is provided for general information and is not legal advice.
© 2026 Grand Park Law Group, A.P.C. Attorney Advertising.

| Beverly Hills • San Francisco • San Diego • Chicago |
| Main: (888) 629-GPLG (4754) • Fax: (310) 900-0805 • www.GrandParkLawGroup.com |