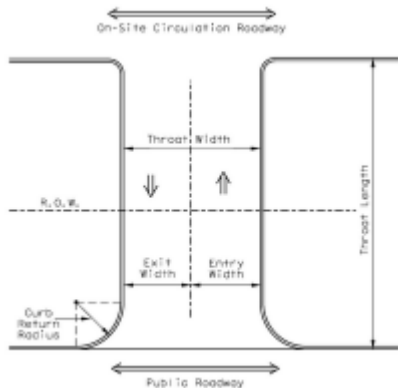


Mutual Driveways: Ownership, Use and Maintenance



By Brian Madigan LL.B.

So just what is a mutual drive and how does it work?

You will probably find that mutual driveways are located in downtown areas that might originally have been the first suburbs. They were often put together in the 1920's, 30's, or 40's. The lots are often relatively narrow, perhaps 25 feet in width and the lots are not too deep, usually 100 feet or sometimes less.

Now, with a 25 foot wide lot, you probably have a 3 foot setback on the other side of the house. This leaves 22 feet for the house without a driveway. You basically need about 10 feet in width for a driveway, so that would take you down to 13 feet for the house. That's awfully narrow. So, why not have two neighbours each contribute 5 feet towards a shared driveway? This way, there will be 18 feet left for the house and that's workable. You will also find that one builder will likely own both lots, so setting up the right documentation will be easy.

So, we need 5 feet of width from each party. We probably only need the driveway to run back 75 feet, because now you are behind the house and each neighbour can safely turn into their own respective backyards where they may or may not have constructed garages.

Let's assume that Bob the builder purchased two lots, in plan 231, being 7 and 8. He then conveys each of the two lots to different buyers, John Smith and Wilma Telford.

Lots 7 and 8 are side by side, both located on the north side of Main Street. Lot 7 is to the west of Lot 8.

Assuming the property is registered in the **Land Titles** office, the **abstract** might read something like this:

Lot 7 Plan 231

John Smith is the registered **owner** in fee simple of Lot 7 Plan 231,

Subject to a right of way over the easterly 5 feet, commencing at the south east corner of lot 7, proceeding in a northerly direction along the boundary between lots 7 and 8, a distance of 75 feet,

Together with a right of way over the westerly 5 feet, commencing at the south west corner of lot 8, proceeding in a northerly direction along the boundary between lots 7 and 8, a distance of 75 feet,

The aforesaid rights-of-way comprising a mutual driveway for the benefit of the respective owners of lots 7 and 8 for ingress and egress by pedestrians, and motor vehicles, such mutual driveway to be maintained from time to time as required by the owners of Lots 7 and 8.

So, what does that basically mean?

John Smith is the registered owner of Lot 7. He pays the property taxes on Lot 7. However, he has offered up 5 feet of property a distance of 75 feet along the east side of his property as the servient tenement in a mutual driveway. But, he picks up the adjacent 5 feet on the west side of Lot 8 as the dominant tenement.

When it comes to **maintenance**, he is solely responsible for Lot 7, but his neighbour, Wilma Telford is jointly responsible for the maintenance of his side of the mutual driveway. Similarly, he is obligated to repair the 5 foot by 75 foot over property that Wilma has contributed to this shared drive.

So, if there are particular repairs required to one side or the other, it doesn't really matter. They both share equally in the costs of repair and maintenance of the entire "mutual driveway".

When it comes to **use**, you will notice that it says "ingress and egress"; that means "coming and going" it doesn't mean "parking", not even for 5 minutes.

You will also see that the use is restricted to pedestrians and motor vehicles. This does not mean "boat trailers". You will of course appreciate that there could be many possible disputes between neighbours concerning the use of a mutual driveway.

Let's assume that it snows bigtime at 11:00 pm. The snow plough comes by at 11:30 pm and fills in the entrance. Who's going to shovel it out? The answer is rather simple. The first one who needs to go out! That's who. This snow dumping by the municipality close to midnight was on municipal property. The mutual driveway starts another 10 or 15 feet away. So, there's actually no obligation upon either party to deal with snow on municipal property. Although, there is likely to be a municipal by-law requiring owners to clear the sidewalks (owned by the municipality) in front of their homes, it won't say anything about the snow piled

up on municipal property blocking access to your mutual driveway.

Many of these types of problems will just have to be worked out between the two parties. If John is up and 7:00 am and needs to leave by 7:45 am, then he'll have to clear it himself. Although, Wilma is supposed to help clear the mutual driveway itself. This is not much help if she is still in bed.

Now, let's consider some of the problems at the back of the house. Let's assume that John has a two car garage and Wilma does not. Can Wilma store her boat and trailer in her backyard? Is John allowed to use Wilma's large parking area behind her house and north of the 75 foot drive to back up his car and drive forwards out of the driveway? The first problem is simple. Wilma is not allowed to use to mutual driveway for that particular purpose. But, if she could get the boat and trailer in her backyard otherwise, ie. through another neighbour's property, then she can store it there, unless there is a municipal by-law or restrictive covenant that would prevent her.

In John's case, the answer is also simple: he's trespassing. The mutual drive is 5 feet by 75 feet. If he needs more room to turn around, he'll have to do that on his own property. If he doesn't have enough room, because he built a garage, then that's too bad, he'll just have to back up between the two houses, and with a little bit of an incline, and a little bit of ice, that could be tricky.

As you can probably appreciate, there are many issues that arise about mutual driveways that are simply not resolved. If you have a good neighbour, then all the little problems are just that: little. But, if you have a difficult neighbour, then, you might want to just move on.

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