

## Streets, Sidewalks and Lot Lines

By Dale Alberstone, Esq.

Several years ago, I authored an article for AOA Magazine on a topic which is also the subject of this month's discussion. Because sidewalks, streets and lot lines continue to pose important issues in law, this month's column will review those laws and update them with new cases.

Let's begin with a multiple choice quiz:

- 1) The sidewalk in front of a property owner's lot is usually owned by:
  - a) The city;
  - b) The county;
  - c) The property owner;
  - d) The tenants.
  
- 2) The parkway (i.e. the grassy area between the sidewalk and the curb) in front of a property owner's lot is usually owned by:
  - a) The city;
  - b) The county;
  - c) The property owner;
  - d) The tenants.
  
- 3) The portion of the public street between the curb and the middle of the roadway is usually owned by:
  - a) The city;
  - b) The county;
  - c) The property owner;
  - d) The tenants.
  
- 4) The sidewalk in front of a property owner's lot should be maintained in a safe condition by:
  - a) The city;
  - b) The county;
  
  - c) The property owner;
  - d) The tenants.

### Ownership of Sidewalks and Streets

By a law first enacted in 1872, it is the general rule that an owner of land whose property is fronted by a public road or street is presumed to own the land from the edge of his lot line to the middle of the roadway. (Civil Code Section 831) As surprising as it may seem, this law has been interpreted to mean that the owner of property not only owns the lot as depicted on his or her title policy, but also owns the sidewalk, grassy parkway and the nearest one-half of the public street.

Further, under Civil Code Section 1112, which was also enacted in 1872, the transfer of the lot from a grantor to a grantee or a seller to a buyer implicitly transfers all of the land from the boundary of the lot to the center line of the fronting roadway.

But even though the sidewalk, parkway and first one-half of the street is owned by the property owner, generally these areas have dedications or other types of easements associated with them for the benefit of the public, much the way that utility companies have rights over and under property to run cables,

sewers and other conduits. Such easements implicitly restrict the property owner from building on or otherwise interfering with the use of the portion of the land between the lot line and the middle of the roadway.

Surprisingly, if a property owner owns the parcels of land on both sides of a street, and so long as he does not interfere with underground easements and utility services, he may have the right to construct a tunnel under the street from one property to the other in accordance with applicable building codes.

#### Maintenance of Sidewalks and Streets

Street and Highway Code Section 5610 imposes a duty on property owners to maintain the sidewalk in front of their property in a condition which will not endanger others who use the sidewalk. Recent cases, however, have limited an owner's liability to travelers injured on the sidewalk to such instances where the owner creates the injurious sidewalk condition. In other words, while an owner may bear the duty to repair defects in the sidewalk, if he did not create those defects, our courts have decided that it would usually be unfair for the owner to be liable to pedestrians who are injured as a result of defects which were not of the owner's making.

With respect to parkways, the requirement of maintenance of the grassy area turns upon the historical patterns of care with regard to those parkways. In some localities, the practice of maintaining the surface area of the parkways is by the abutting owners. In such localities, those owners bear the duty to keep the surface areas in a reasonably safe condition. In other localities, where the city has habitually maintained the parkways, then it is the city's duty to keep the surface area safe for pedestrians. Local ordinances may also impose a responsibility on the landowner to repair various surfaces and even establish liability to an injured third party if the owner fails to maintain the land.

In the recent case of Martinez v. Chippewa 121 Cal.App. 4<sup>th</sup> 1179, the Court of Appeal held that liability for a slip and fall injury occurring on a sidewalk or driveway may be dependent upon whether the landowner negligently maintained the pavement. In addition, the court held that even if the landlord did not have a duty to repair the property, in some instances he might be responsible for failing to warn of the dangerous condition.

A similar rule applies to trees planted on the parkway. In settings where the owners have planted the trees or have habitually trimmed them, then the owners have the duty to maintain the trees in a safe condition. Where the city has planted the trees on the parkway and has performed necessary maintenance, then the duty to safely maintain the trees rests with the city.

With respect to the one-half of the roadway nearest to the owner's property, the governmental agency which routinely maintains the streets is responsible for their safe condition.

Returning to sidewalks, our courts also explain that an additional factor to determine if there is liability is to take into account the physical size of the defect. Situations in which courts have found defects to be minor and trivial, and therefore shield the property from liability, are the following: A sidewalk crack producing 1½ inches in elevation difference, a sidewalk that had a grade of 58/100 inches per foot, sidewalk panels which had a 1 inch difference in elevation, a sidewalk which had a 1 inch rise, adjoining sidewalk panels which varied from ½ of an inch to 1/38 of an inch in height, two slabs of sidewalk which varied ½ of an inch, a sidewalk which had a ¾ inch irregularity and a sidewalk which had an edge raised no more than ¾ of an inch. Attorneys wishing the citations for the cases discussing these irregularities may call me at the telephone number appearing at the end of this column.

#### Lot Lines

Although property owners routinely think of their ownership as being limited to the four (or more) sides of their parcel as reflected in their title policy, their actual ownership extends from the front lot line to the middle of the abutting roadway. Lot lines generally demarcate the area which may be exclusively used by the owner, and others with the owner's permission (such as tenants), to the exclusion of all others. Under circumstances where third persons traverse the owner's lot without the owner's consent, the owner needs to be cautious about losing property rights to such pedestrians by prescriptive easements. An owner who is aware that the area bounded by his lot lines is subjected to use by a trespasser, neighbor or other

person without the owner's consent, the owner should take prompt action (usually with the assistance of competent real estate counsel) to prevent that person from acquiring a prescriptive easement on the owner's lot.

Of course, when such individuals use the sidewalk or street in front of the owner's property, the owner typically has no right to stop that usage as those areas, even though owned by the owner, as they are customarily dedicated for public usage.

#### Conclusion

The answer to each of the multiple choice questions set forth at the outset of this article is "C". But regardless of the technical aspects of ownership, the best advice that can be given is that each owner maintain good and sufficient insurance coverage.

Attorneys who wish to research the issues raised herein should review Safwenberg vs. Marquez, 50 C.A.3d, 301 and Jones vs. Deeter, 152 C.A.3d 798 and may call me for additional citations.

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*Mr. Alberstone has been awarded an **AV** rating from Mardindale-Hubbell. An **AV** rating, registered through Reed Elsevier, reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.*

*The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.*

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