

# Understanding the Doctrine of Merger

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The doctrine of merger is a common law concept that landowners and industry professionals should carefully pay attention to in all real estate transactions, especially farmland transactions. One concept of the doctrine of merger addresses the unity of ownership in connection with an easement. When the dominant and servient estates have common ownership, the need for the easement is removed, and the easement is extinguished. Another concept revolves around a real estate transaction with the delivery and acceptance of an unambiguous deed - if not explicitly excluded, the real estate contract will merge into the deed, and certain rights and remedies included in the contract may be extinguished.

## **Doctrine of Merger and Easements**

When an easement is granted between two parties, there becomes a dominant estate and a servient estate. The dominant estate is the property that is benefited by the easement and the servient estate is the property that is burdened by the easement. The doctrine of merger is a well-established common-law concept that when the dominant estate and servient estate have a unity of ownership, an easement appurtenant to the dominant estate is extinguished. So, what does that mean? Below is an example explaining the doctrine of merger-related to easements.

A owns an 80-acre tract called Blackacre and B owns an adjoining 80-acre tract called Whiteacre. Blackacre is comprised of mostly tillable farmland and Whiteacre is comprised of mostly pastureland with a house situated on it where B lives. A granted B an easement appurtenant for ingress and egress across Blackacre for B to access Whiteacre. The driveway is the only way for B to access Whiteacre and B's home. In this situation, Blackacre is the servient estate and Whiteacre is the dominant estate. If A decides to sell Blackacre to B, B must be mindful of the doctrine of merger. Once A conveys the fee simple title of

Blackacre to B there is no longer a necessity for the easement, and the easement is merged and extinguished with B's fee simple ownership of both Blackacre and Whiteacre. Where landowners and industry professionals need to be most mindful of the doctrine of merger is when B, or B's heirs or successors, decide to sell either Blackacre or Whiteacre.

In the event B decides to sell Blackacre a year after acquiring it, B must ensure that B retains an easement appurtenant for ingress or egress to access Whiteacre; otherwise, B will no longer be able to use the easement to legally access Whiteacre. In such an event, B will be forced to re-negotiate an easement with the new owner of Blackacre or find an alternative route to access Whiteacre. Therefore, parties involved in real estate transactions need to understand the title history, potential access issues, and easements that have since been extinguished by the doctrine of merger.

### **Doctrine of Merger and Deeds**

Buyers and Sellers should also understand the potential issues related to the doctrine of merger applying to the purchase agreement and deed when handling real estate transactions, also referred to as the "merger by deed." Although each state has its case law, in general, when the terms in a contract are not contained in the subsequent deed, those terms are waived and superseded by the terms of the deed. Under the doctrine of merger, all prior agreements between a buyer and a seller are merged in the deed upon the deed's acceptance. The deed supersedes the provisions of the real estate contract and becomes the only binding instrument between the parties. Although this doctrine has many nuances, it may be detrimental to parties and the subject of litigation if not properly considered and contemplated.

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