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Commercial Real Estate Boundaries: Do I Need to Worry About my Neighbor's New Driveway

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On occasion, questions will arise regarding the impact of what seems to be a neighboring property owner's use of your land. It may seem contrary to what you believe the property boundaries are, such as widening a driveway, etc. When the neighbor takes this action, it is often viewed as the exercising of a right adverse to your property interest.

When a neighboring property owner takes such action, it could simply be a mistake where the property line is established. Or the neighbor may be trying to establish a right of adverse possession or prescriptive rights to acquire a part of your land.

To establish any final legal right of acquiring property through adverse action, there must be 20 years of continuous and uninterrupted possession. That adverse possession must be hostile in inception, continue as such and be visible to the actual owner. A permissive (or permitted use) never ripens into a prescriptive or adverse taking.

Typically, to create the presumption of a grant of right-of-way, the circumstances must appear as though it was established for the claimant's benefit, accompanied by a claim of right, or as though the acts manifested an intention to enjoy it without regard to the owner's wishes.

Should there be an encroachment, the way to address the issue is to obtain a professional survey of the boundary lines for the properties. If there is a dispute, politely approach the neighbor to discuss what appears to be a mistake regarding the property line. If the neighbor objects and you are confident in your position but there is not enough at stake to take legal action, consider granting the neighbor a "license" to leave the expansion of the driveway in place (or other improvements). By granting the license, the action is no longer adverse. So you cut off the time to establish adverse possession if there is an actual occupation.

For questions on matters such as the above or other real estate matters, please contact the Real Estate Practice Group at Masuda, Funai.