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## Is My Driveway Okay— Checking with a Lawyer before Drastically Changing Access to Your Property

Solomon & Sandra live at 56 Giant Hill Road. Fifteen years ago Solomon and Sandra built a granny flat at the front of their property for Sandra’s mum. The front door of the granny flat opened directly onto Giant Hill Road. The granny flat stretched the entire width of the property.

Even though Solomon and Sandra’s property had direct access to the road prior to building the granny flat, they never accessed the property that way as they always used the driveway which passed through neighbouring properties. The neighbours never complained about this.

Thomas who owned 54 Giant Hill Road sold his house to William three months ago. William decided to build a new garage at the front of the property on the driveway. Construction began and Solomon and Sandra realised they could no longer access their property, they were landlocked.

Land is landlocked if:

- (a) In the practical sense there is no reasonable access (this does not necessarily mean vehicular access);
- (b) Any other alternative means of access would require large sums of money;
- (c) Any way of access is blocked by the building of a fence or wall or erection of physical barriers to enforce legal rights;
- (d) Lack of access is a matter of fact (not law) whereby there is no actual physical access of a good nature and quality as may be reasonably necessary to enjoy the property;
- (e) The situation is not a by-product of actions or activities of the applicant e.g. constructing an entire building over the street frontage and expecting access over neighbouring property or removal of

internal staircase from the front of the street expecting access over the back of the property.

As you can see by this definition, the land is not landlocked as Solomon and Sandra blocked their own access. Accordingly, Solomon and Sandra cannot expect the Court to intervene and must remove the granny flat for access at their own cost.

Two months ago, Solomon’s father passed away. Solomon inherited a piece of land from his father. The land has always been sitting vacant, however Solomon and Sandra wish to build a second home on that piece of land. The land is in the country and the nearest neighbouring road is 3.7 kilometres away. Farmer Joe’s farm is located between the road and Solomon and Sandra’s vacant lot. According to the certificate of title there is a private road which goes around farmer Joe’s farm and connects the land to the road 3.7 kilometres away. In reality this area is in fact a wet marshland. To transform this area into a driveable road would cost significant amounts of money. Accordingly, the land is landlocked based on the definition above.

Solomon and Sandra approach farmer Joe to buy some of his land to use as a driveway. Farmer Joe says “no”. Solomon and Sandra therefore ask the Court if the Court can somehow remedy the situation. The Court looks at:

- (a) The nature and quality of access at the time of purchase;
- (b) Circumstances leading to the land becoming landlocked;
- (c) The conduct of the parties in trying to resolve the issue; and
- (d) The hardship that would be faced by all parties which may be affected by the Court creating access.



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As the access problem is not the result of Solomon and Sandra's actions, and as they have tried to reasonably sort the problems themselves, and as the hardship to farmer Joe would be minimal as only a small section of his farm at the edge of his farmland would be needed and the driveway would not interfere with his farm, the Court rules that for a sum of money, Solomon and Sandra can have the right to drive over a certain part of farmer Joe's farm.

If you are building on a vacant lot, extending your existing house or landscaping your garden and moving your driveway or stairs, double check that the improvement is not blocking your access to your house. Also when buying a property, check the title to see how you are legally meant to access the property and double check that that is how you actually do access the property.

- The next newsletter will cover the topic of Disputes— *What are your Rights?* By Amy Haste