

California
Civil Code

§ 845. Maintenance of right of way; Sharing of costs by co-owners

(a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. If any owner who is a party to the agreement refuses to perform or fails after demand in writing to pay the owner's proportion of the cost, an action for specific performance or contribution may be brought against that owner in a court of competent jurisdiction by the other owners, either jointly or severally.

(c) In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

Any owner of the easement, or any owner of land to which the easement is attached, may apply to any court where the right-of-way is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost. The application may be made before, during, or after performance of the maintenance work. If the arbitration award is not accepted by all of the owners, the court may enter a judgment determining the proportionate liability of each owner. The judgment may be enforced as a money judgment by any party against any other party to the action.

(d) In the event that snow removal is not required under subdivision (a) or under any independent contractual or statutory duty, an agreement entered into pursuant to subdivision (b) to maintain the easement in repair shall be construed to include snow removal within the maintenance obligations of the agreement if all of the following exist:

(1) Snow removal is not expressly precluded by the terms of the agreement.

(2) Snow removal is necessary to provide access to the properties served by the easement.

(3) Snow removal is approved in advance by the property owners or their elected representatives in the same manner as provided by the agreement for repairs to the easement.

(e) The provisions of this section do not apply to rights-of-way held or used by railroad common carriers subject to the jurisdiction of the Public Utilities Commission.

Added Stats 1939 ch 755 § 1. Amended Stats 1985 ch 985 § 1; Stats 1993 ch 196 § 1 (SB 370).

Amendments:

1985 Amendment: (1) Added subdivision designations (a), (b), (c), and (d); (2) added the second sentence of subd (b); (3) amended the second paragraph of subd (c) by (a) substituting the first sentence for the former first sentence which read: "In the absence of an agreement, any owner of the easement, or any owner of land to which the easement is attached may

apply to the superior court where the right of way is located for the appointment of an impartial arbitrator to apportion such cost."; (b) adding the second sentence; (c) substituting "enter a judgment determining the proportionate liability of each owner" for "determine the proportionate liability of the owners; and its order shall have the effect of a judgment" at the end of the third sentence; and (d) adding the

last sentence; (4) deleted the former fourth paragraph which read: "If any one of the owners of the easement or parcels of land fails, after demand in writing, to pay his proportion of the expense, an action may be brought against him in a court of competent jurisdiction by the other owners, either jointly or severally, for contribution."; and (5) substituted "Public Utilities Commission" for "Railroad Commission of the State of California" at the end of subd (d).

1993 Amendment: (1) Added subd (d); and (2) redesignated former subd (d) to be subd (e).

Collateral References:

Cal Forms Pl & Practice, ch 240, "Easements".

Withkin Summary (9th ed), "Real Property" § 47.

Cal Jur 3d (Rev) Easements and Licenses in Real Property § 39.

Miller & Starr, Cal Real Estate 3d §§ 15:67, 35:2.

Forms:

See also forms set out below, following Notes of Decisions.

Law Review Articles:

Review of 1985 legislation. 17 Pacific LJ 776.

NOTES OF DECISIONS

1. Generally

It is duty of owners of easement to keep it in repair. *Crease v Jarrell* (1924) 65 CA 554, 224 P 762.

Ordinarily owner of easement is required to keep it in repair, but parties may alter their legal obligations by contract. *Rose v Peters* (1943) 59 CA2d 833, 139 P2d 983.

Ordinarily owner of servient tenement is under no duty to maintain and repair easement. *Herzog v Grosso* (1953) 41 C2d 219, 259 P2d 429.

Purchase of lands subject to easement for a road puts on purchaser no obligation to maintain service of road, such burden remaining on easement owner. *Conklin v Goodson* (1954) 125 CA2d 823, 271 P2d 147.

Court having found that defendants hold valid easement over plaintiffs' property, properly refused to apportion costs of maintaining easement between parties where there are other parties served by easement who are not before court, and these parties would not be bound by any order or judgment court might make, thereby precluding court from making complete determination of their respective obligations. *Whitson v Goudeseune* (1955) 137 CA2d 445, 290 P2d 590.

Section provides method by which owners of land continuous to easement in nature of private right of way may be compelled to contribute to cost of keeping way in repair, but does not require nonconsenting owners to contribute to cost of making major improvements in the way, such as paving it. *Holland v Braun* (1956) 139 CA2d 626, 294 P2d 51.

Nonconsenting co-owners of easement in nature of right-of-way may be compelled to con-

tribute to keeping of way in repair, but they may not, without their consent, be compelled to contribute to cost of major improvements. *McManus v Sequoyah Land Associates* (1966) 240 CA2d 348, 49 Cal Rptr 592, 20 ALR3d 1015.

The rules set forth in Civ. Code, § 845, govern the maintenance of private rights-of-way in the absence of an agreement and provide a method by which to apportion costs if no agreement is reached among the owners of an easement and a remedy enforceable against a delinquent owner by the other owners of the easement. *Taormino v Denny* (1970) 1 C3d 679, 83 Cal Rptr 359, 463 P2d 711.

Under Civ. Code, § 845, subd. (c), providing that if an arbitration award apportioning the costs among coowners of a private right-of-way easement is not accepted by all the owners, the court may enter judgment determining proportionate liability, the trial court, in proceedings to confirm such an award (CCP §§ 1285 et seq.), erred in denying the dissenting owner a trial de novo. Because § 845 requires that an arbitrator apportion costs before the matter reaches court, and the statutory scheme is compulsory, the confirmation procedure in the statutory arbitration scheme (CCP §§ 1286.2, 1286.6, which gives near conclusive weight to the arbitrator's decisions, applies only to voluntary arbitration pursuant to agreement, and thus does not apply to arbitration under CC § 845. Otherwise, the statute would involuntarily deprive an affected party of his constitutional right to trial. However, there is no right to a jury trial, since the § 845 action is expressly one for contribution and therefore in equity. *Healy v Onstott* (1987, 6th Dist) 192 Cal App 3d 612, 237 Cal Rptr 540.

SUGGESTED FORMS

Petition for Appointment of Arbitrator

Notice of Hearing of Petition for Appointment of Arbitrator

Petition for Appointment of Arbitrator

[Title of Court]

In the Matter of Arbitration

Between _____
Petitioner,
and

No. _____
PETITION FOR APPOINTMENT
OF ARBITRATOR

Respondent(s).

Petitioner, ____, respectfully states:

I

Petitioners ____ and ____ are owners of ____ [an easement in the nature of a private right of way or land to which is attached an easement in the nature of a private right of way] described and located as follows: _____. *[Set forth use made by petitioner.]*

II

_____. *[Set forth use made by other owners.]*

III

_____. *[Set forth nature of ownership, where relevant.]*

IV

_____. *[Set forth proportionate share of maintenance costs in the past, where relevant.]*

V

There is no agreement between petitioner and respondent(s) as to the cost to be shared by petitioner and ____ of the maintenance of that _____.

VI

_____. *[Set forth existing dispute or other necessity for appointment of arbitrator.]* In order to settle the dispute, it is necessary and advisable that the court appoint an arbitrator, pursuant to Civil Code § 845.

Wherefore, petitioner prays that the Clerk of this court set a time and place for a hearing on this petition and that at hearing the court make its order appointing an impartial arbitrator to apportion costs, and for any other and further relief that may be proper.

Dated _____.

[Signature]

[Verification]

Notice of Hearing of Petition for Appointment of Arbitrator

[Title of Court and Cause]

You will please take notice that on ____ *[date]*, at ____ o'clock ____m., or as soon after that as counsel can be heard, the petition of ____ for an order appointing an impartial arbitrator to apportion the costs of maintaining that certain ____ more fully described in the petition on file in this action, will come on for hearing before _____.

Dated _____.

[Signature of clerk]

[Title of Court and Cause]

The petition of ____ for an order appointing an arbitrator to apportion the costs of maintaining a certain ____ came on for hearing before me this ____ day of ____, ____ [year], ____ appearing as attorney for ____ and ____ appearing as attorney for ____, and the court being fully advised, and good cause appearing therefor;

It is hereby ordered that ____ be and is hereby appointed arbitrator to apportion the just and proper costs of maintaining ____, more fully described in the petition on file in this action; ____ [provision for powers, pay, etc.]; and ____ is hereby directed to serve upon the parties to this action and file with the Clerk of this Court not later than ____ [date] a written report of ____ [arbitrator's] findings and recommendations.

Dated ____.

[Signature of judge]

Notice of Motion for Order Determining Proportionate Liability of Owners of Easement

[Title of Court and Cause]

To: ____ [each party] and to ____ [attorney of record for each party in action].

Notice is hereby given that on ____ [date], at ____ o'clock ____ m., or as soon after that as the matter can be heard, ____ [at the courtroom of ____ (presiding judge) or in Department No. ____ or in the Law and Motion Department] of the above-entitled court at ____ [address], in the City of ____, County of ____, State of California, ____ [moving party] will, and does hereby, move the court for an order that this court determine the proportionate liability of ____ for the maintenance cost of ____.

This motion will be made on the ground that on ____ [date], this court appointed ____ arbitrator to apportion costs and that on ____ [date], ____ refused to accept the award and recommendation of ____.

This motion is based on this notice, the pleadings, records, and papers on file in this action, the attached memorandum of points and authorities, oral and documentary evidence that may be presented at the hearing of the motion, and the attached ____ [affidavit or declaration] of ____.

Dated ____.

[Signature of attorney]

Points and Authorities:

Order Determining Proportionate Liability of Owners of Easement

[Title of Court and Cause]

The motion of ____ for an order determining the proportionate liability of ____ for the maintenance costs of ____ came on for hearing before me this ____ day of ____, ____ [year], ____ appearing as attorney for ____ and ____ appearing as attorney for ____, and the court being fully advised, and good cause appearing therefor;

It is hereby ordered that the proportionate liability of the parties for the maintenance costs of ____ be and it is hereby determined as follows: ____; ____ [provision for costs of petition].

Dated ____.

[Signature of judge]

§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for