



Easements

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Easements



- A. Introduction
- B. Basic Terminology
- C. Easement Classification
- D. Easement Types
- E. Formal Easement Creation
- F. Rights and Restrictions
- G. Easement Termination
- H. Wrapping Up



A. Introduction

Easements

Allow

- Owner to exercise rights outside the property
- External party to enjoy use of someone's property
- External party to provide services to a property

Surveyors

- Create easements
- Locate easements – not always easy to do.
- ALTA-NSPS – client is supposed to provide the research...

This session is general Intro to Easements



B. Basic Terminology

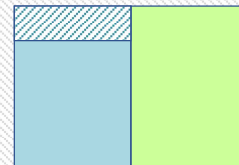
1. Characteristics

easement, n

An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)...

Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, or sell the land.

A right of limited use of another's land.
A non-possessory interest in the land
User cannot realize profit from the land



B. Basic Terminology

1. Characteristics

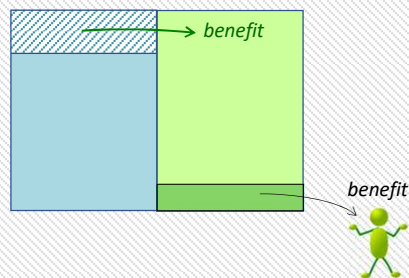
Easement has:

Benefit - rights granted to the easement holder

Holder can be:

Property - Dominant estate

Individual - Benefitting party

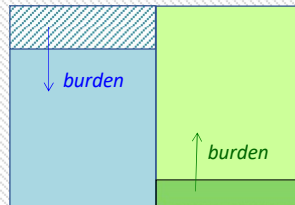


B. Basic Terminology

1. Characteristics

Easement has:

- Burden - obligation on land subject to the easement .
- Servient estate (aka, Burdened estate).



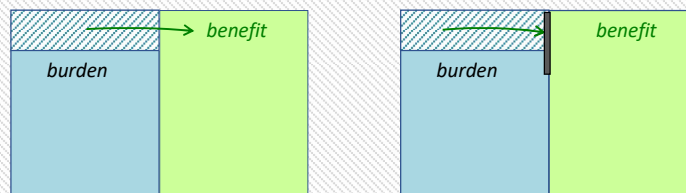
B. Basic Terminology

1. Characteristics

Servient estate cannot interfere with beneficiary's use.

Example

- Easement granted to drive over a certain portion of a property
- Property owner can't construct a wall which interferes with the enjoyment of that right.



Servient estate cannot revoke easement as long as terms are not violated.



B. Basic Terminology

1. Characteristics

An easement may be affirmative or negative.

Affirmative - grants right of use in a servient estate.

Negative - prevents servient estate owner doing some act on his/her land.



B. Basic Terminology

2. License; Lease

License - revocable nonpossessory right of use; permissive

Licensee cannot transfer license to third party.

Ex: Software license



Lease - revocable possessory use for a specific time period.

Leaser can transfer lease to third party.

Ex: Apartment lease

Sublease



C. Easement Classification

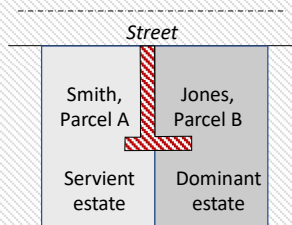
1. Appurtenant easement

Benefit is assigned to, and runs with, a property.

When the property is sold, easement goes with it.

Easement cannot be conveyed separately from the land.

Benefit and burden are associated with properties not individuals.



Parcels A and B share a common driveway over Parcel A.

Parcel B has appurtenant easement over Parcel A.

Jones sells to Black; Black get use of the easement.

Smith sells to Horn; Horn is encumbered



C. Easement Classification

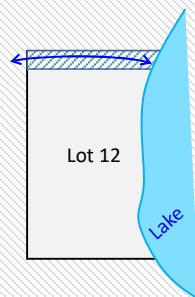
2. Easement in Gross

Benefit is assigned to an entity; there is no dominant estate.

Entity can be an individual, corporation, etc.

Need not be a property owner

Benefited party may convey easement to third party,



Lot 12 owner gives a water access easement to his kayaking friend.

Burden runs with Lot 12 - subsequent owners subject to the easement.

Friend can sell the easement to another party as long as for the same purpose.



C. Easement Classification

3. Appurtenant or in Gross?

What if it's not clear what kind of easement it is?

Appurtenant

- Should be included in servient estate's description.
- Should also appear in dominant estate's description.
- On referenced plat if in subdivision

In Gross

- No dominant estate so will not appear in a property description, but can exist as a separate easement document. May or may not reference servient estate(s).
- May or may not appear in servient estate description.



C. Easement Classification

3. Appurtenant or in Gross?

What if it's not clear what kind of easement it is?

Courts tend to interpret as **appurtenant.**



Easements are presumed appurtenant unless there is clear evidence to the contrary.

Cushman v. Davis, 80 Cal. App.3d 731, 145 Cal. Rptr. 791 (1978).



D. Easement Types

Various methods of creating easements depending on:

- allowed use(s)
- benefited party(ies)
- voluntary/involuntary burden
- conditional requirements
- etc



D. Easement Types

1. Express grant (or reservation).

Common method used in written descriptions.

Granted, in writing, by the owner of the servient estate.

Part of a conveyance

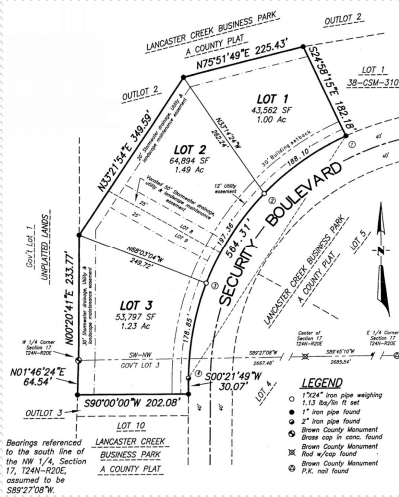
Therefore subject to the Statute of Frauds



D. Easement Types

2. Dedication

Similar to express grant except it is created by inclusion on a recorded plat.



Plat can show existing and new easements.

Public dedication:

Some jurisdictions require gov't rep accept dedication as part of plat approval.

Usually as an easement, some jurisdictions accept only as fee.



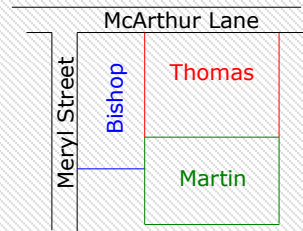
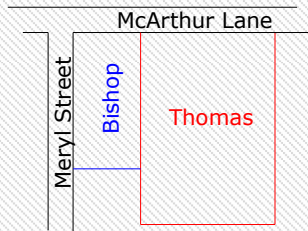
D. Easement Types

3. By Necessity

Used when a land division and conveyance results in a property that has no access.

Example:

Thomas creates and conveys to Martin a back part of his parcel without a written easement provision (whoopsie).



D. Easement Types

3. By Necessity

Requirements

“Under the common law, where land is sold that has no outlet, the vendor by implication of the law grants ingress and egress over the parcel to which he retains ownership, enabling the purchaser to have access to his property.”

Bickel v. Hansen, 819 P. 2d 957 - Ariz: Court of Appeals, 2nd Div., Dept. B 1991

“...to establish an easement by necessity, the proponent must show: (1) unity of title, indicating that the dominant and servient estates were owned as a single unit prior to the separation of such tracts; (2) that the dominant estate has been severed from the servient tract, thereby curtailing access of the owner of the dominant estate to and from a public roadway; and (3) that a reasonable necessity existed for such right of way at the time the dominant parcel was severed from the servient tract.”

Herrera v. Roman Catholic Church, 819 P. 2d 264 - NM: Court of Appeals 1991



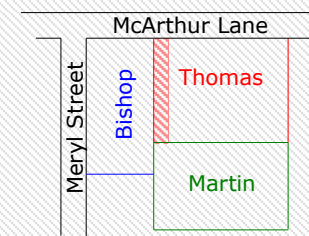
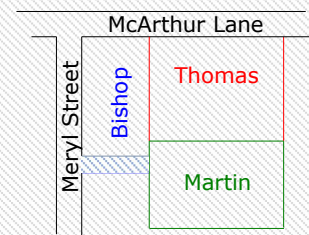
D. Easement Types

3. By Necessity

Despite its advantages, Martin cannot gain easement across Bishop's property.

Bishop did not cause the landlock.
Outside the situation.

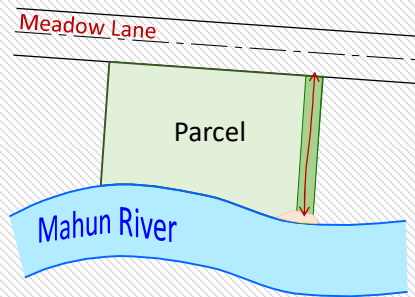
Thomas is parent parcel – created landlock.
Must resolve the access situation.
Easement by necessity over Thomas.



D. Easement Types

4. Prescription

Easement created through long term use of land without permission.



Parcel

North side: public street
South side: navigable river
Unimproved lane along east side

20+ years: people drove in lane to the river to fish, swim, etc.

Open, hostile, adverse, uninterrupted use.
Public can gain an easement



D. Easement Types

4. Prescription

Prescription is related to adverse possession and shares similar requirements.

Adverse possession (and usually prescription) specific conditions generally statutorily defined

e.g., time period, right of entry, payment of taxes. etc.

Primary difference common to all jurisdictions:

Adverse possession claim is for **ownership** - entire fee

Prescription is claim for a **use** - underlying fee belongs to the parent parcel.

Others may require:

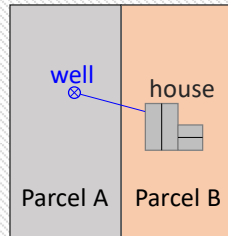
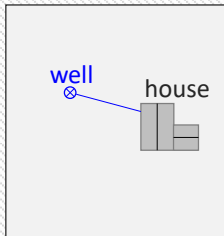
Exclusivity

Payment of taxes



D. Easement Types

5. Implied



Not *expressly* created, but based on action the implication is that one was intended.

Parcel owner conveys westerly part, retains remainder.

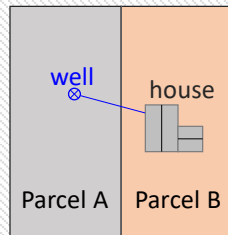
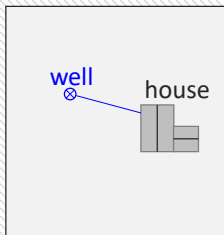
Well is on Parcel A but no reservation clause for well access

Parcel B may gain the easement to the well by implication.



D. Easement Types

5. Implied



Court would determine if an easement is necessary, what are alternatives.

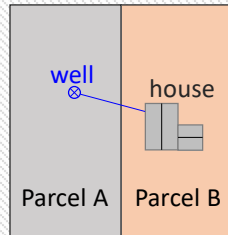
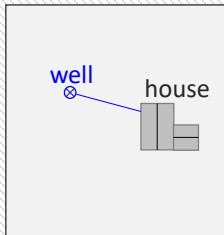
Not all states recognize implied easements.

Difference between implied easement and easement by necessity?



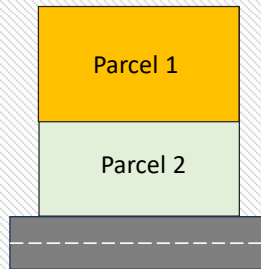
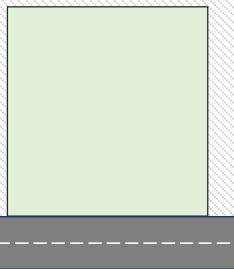
D. Easement Types

5. Implied



Implied easement

maintaining pre-existing use after parcel separation



Easement by necessity

resolving a new situation created by the parcel separation



D. Easement Types

6. Condemnation

Eminent Domain

Power of gov't to acquire land or easement by force on behalf of the public while providing just compensation.

Originally limited to gov't & rep agencies.

Now includes "service providers", eg, utilities

Recent years: Commercial enterprises setting up economic zones.



E. Formal Easement Creation

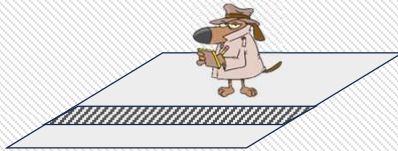
1. Elements

Formal creation should specify

Purpose defines what the easement is for along with limitations on both burden and benefit.

Location identifies where on the servient estate the easement can be enjoyed.

Beneficiary is who has right of enjoyment, either an entity or a property.



E. Formal Easement Creation

1. Elements

a. Purpose

Defines burden and allowable uses.

Support activities

Requires clear & careful wording

Ex: ingress and egress v. access

Servient estate owns underlying fee.

Cannot interfere with beneficiary's easement use.

May include temporal component



E. Formal Easement Creation

1. Elements

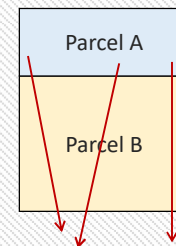
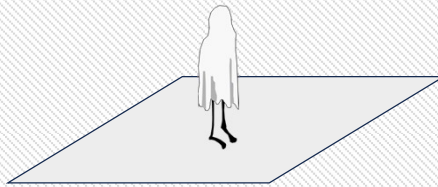
b. Location & Extent

Identify physical location and limits of the easement.

If not stated or is ambiguous court will try to select location that:

- allows easement enjoyment
- has reasonable impact on servient estate

What is a "blanket" easement?



E. Formal Easement Creation

1. Elements

c. Beneficiary

The property or party which is entitled to easement use.

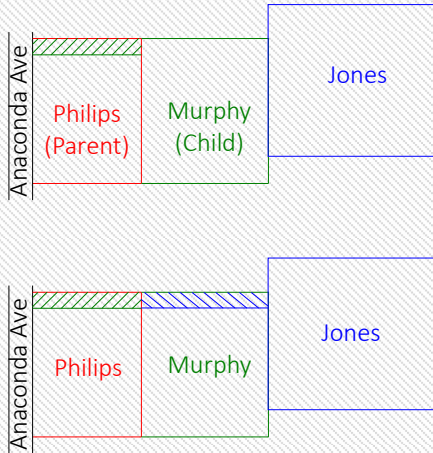
Depending on the instrument used to create the easement, the beneficiary may or may not be clear.

Without knowing who the beneficiary is, it may be difficult to later terminate the easement.



E. Formal Easement Creation

1. Elements



2012, Philips sells back part of parcel to Murphy.
Murphy's description includes "together with an ingress and egress easement across the northerly 50 feet" of Philips land.

Philips' amended deed:

"...subject to an ingress and egress easement across the northerly 50 feet." without identifying Murphy's parcel.

2018 Jones obtains an ingress and egress easement from Murphy across Murphy's northerly 50 feet.

Does Jones lots have Anaconda Street access across Philip's northerly 50 ft?



E. Formal Easement Creation

2. Creation Instruments

a. Subdivision Plat

Locations depicted at same accuracy and information as parcel boundaries.

Existing and new easements.

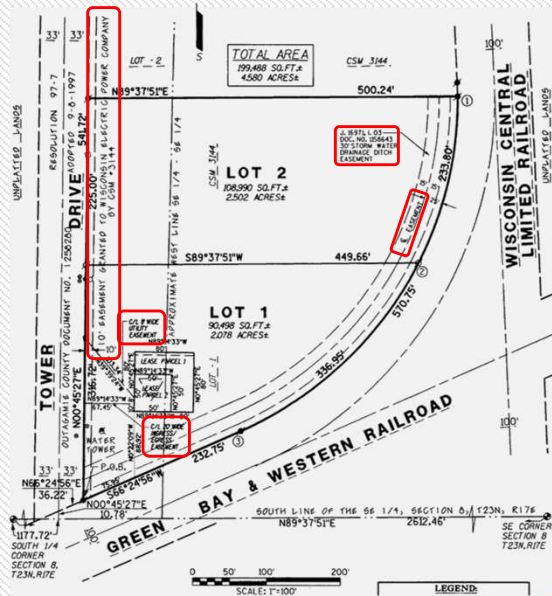
Elements?

Burdened & benefitted parties

Purpose

Location

Appurtenant or in Gross?



E. Formal Easement Creation

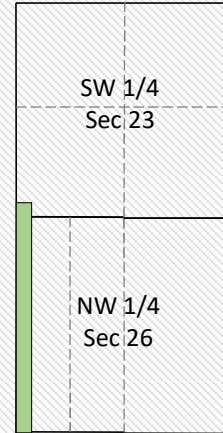
2. Creation Instruments

b. Deed

Included as augmenting (adding) or qualifying (removing) clause in deed description.

The East 100 acres of the East 3/4ths of S1/2 Section 22,
All in Township 9 North, Range 10 East.

Together with an easement over the West 2 rods of the
W1/2 W1/2 NW1/4 of Section 26, and over the South 2
rods of the West 2 rods of the SW1/4 SW1/4 of Section
23, Township 9 North, Range 10 East, for ingress and
egress in and from the above described premises.



Augmenting clause;
Dominant estate

Appurtenant or in Gross?



E. Formal Easement Creation

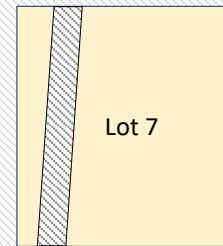
2. Creation Instruments

b. Deed

Included as augmenting (adding) or qualifying (removing) clause in deed description.

Lot 7 ...

Subject to a 50 foot wide electric line easement as
described in Vol 338 page 29, Badger County Register of
Deeds.



Qualifying clause;
Servient estate

Appurtenant or in Gross?



E. Formal Easement Creation

2. Creation Instruments

c. Easement Document

A comprehensive written instrument that describes the easement purpose and location/extent.

Must comply with Statute of Frauds and State deed requirements

The grantee is the beneficiary.

Grantee's deed (generally) identifies grantor

Grantor is the servient estate

Grantor deed probably doesn't identify easement document

Updated to include easement if grantor conveys property?



E. Formal Easement Creation

2. Creation Instruments

c. Easement Document

Grantee's deed

Grantor(s) Ronald A. Goeke and Clarice M. Goeke, his wife

in consideration of One Dollar (\$1.00) and other good and valuable consideration to them paid by WISCONSIN POWER AND LIGHT COMPANY, a Wisconsin corporation, grantee, receipt of which is hereby acknowledged, does hereby grant, convey, and warrant unto said WISCONSIN POWER AND LIGHT COMPANY, its successors and assigns, the perpetual right and easement to erect and maintain a line of single pole structures and wires, including other appurtenances for the transmission of electrical current, and to permit the attachment thereto of electric or telephone wires owned by others, upon, over and across land owned by the grantor in the Town of Prairie du Chien County of Crawford, State of Wisconsin, said easement to be 50 feet in width, lying 25 feet westerly of and 25 feet easterly of the reference line described as follows:

Beginning at a point in the north line of Section 22, T 7 N, R 6 W, 475 feet west of the northwest corner thereof; thence S 13° 10' E 245 feet; thence S 16° 48' E 2,206 feet to a point, said point hereinafter referred to as Point "A".

Also commencing at Point "A"; thence continuing S 16° 48' E 4 feet; thence S 26° 24' W 167 feet to a point, said point being the point of beginning; thence continuing S 26° 24' W 140 feet to the grantors south property line, said line being through the NW 1/4 of the NW 1/4 and through the SW 1/4 of the NW 1/4 of Section 22, T 7 N, R 6 W as recorded in Volume 307 of Records, page 13, in the office of the Register of Deeds for Crawford County, Wisconsin.

Also necessary guys and anchors located west of Company Survey Station 90+24.

This easement supplements that certain easement recorded in the office of the Register of Deeds for Crawford County, Wisconsin, in Volume 158 of Easements, page 550.

TOGETHER with the right to enter upon said premises for the purpose of erecting such structures and stringing said wires, inspecting, and repairing or removing the same. The grantor agrees that no hay or grain stacks, buildings, mobile homes, ~~sewer~~ tanks, antennas, windmills or other structures shall be placed within above described easement strip; and that the grantee has the right to trim ~~sewer~~ such trees as may be located within above distances from the reference line, and other trees ~~time the area within the boundaries of said easement for the purpose of controlling the growth of trees and shrubs growing within said boundaries without additional compensation.~~ The grantor further agrees that the elevation of the existing ground surface located within said easement strip will not in any way be altered more than one (1) foot without the prior written consent of the grantee. Said grantee, however, expressly agrees that it will pay a reasonable sum for damage to other property, including crops, that may be caused by its employees in building and repairing said structures and wires.

Said grantee shall not have the right to erect any fence or building on such land other than said line structures and wires, and the right is hereby expressly reserved to said grantor, his heirs or assigns, of every use and enjoyment of said land not inconsistent with the maintenance, operation, repair, and removal of such structures and wires, and the trimming ~~and removal~~ of such trees as aforesaid.

This agreement is binding upon heirs, successors, and assigns of the parties hereto.



E. Formal Easement Creation

2. Creation Instruments

d. Strip Description

Commonly used with long narrow easements like utilities.

Narrative description of a reference line

Extent expressed as width on both sides of the line.

Same interpretation problems as a metes and bounds property description.

Common composition problems:

Utility easements can get long.

Does not mathematically close back so no math check

Error in early part can have profound effect further along the easement.

Generally, only a small part of description is on parcel.



E. Formal Easement Creation

3. Strip Description

Common composition problems:

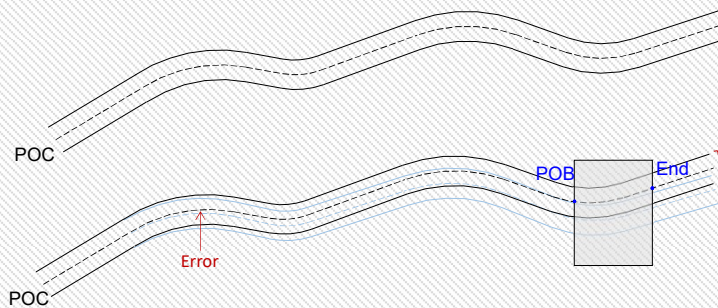
Generally, only a small part of description is on parcel.

The description should:

contain appropriate monument and adjoiner calls.

indicate where on the boundary it intersects

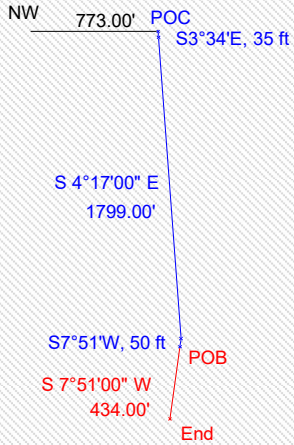
Usually don't.



E. Formal Easement Creation

2. Creation Instruments

c. Easement Document Grantee's deed



ELECTRIC LINE EASEMENT

WPL 2091-P 193826 VOL 338 PAGE 27 Line Title Prairie du Chien-Seneca 69 KV Line
 Tract No. 12
 Work Order No. 72-11-77187.1

Grantor(s) Robert J. Zimmerman and Helen Zimmerman, his wife

in consideration of One Dollar (\$1.00) and other good and valuable consideration to them paid by WISCONSIN POWER AND LIGHT COMPANY, a Wisconsin corporation, grantee, receipt of which is hereby acknowledged, does hereby grant, convey, and warrant unto said WISCONSIN POWER AND LIGHT COMPANY, its successors and assigns, the perpetual right and easement to erect and maintain a line of single pole structures and wires, including other appurtenances for the transmission of electrical current, and to permit the attachment thereto of electric or telephone wires owned by others, upon, over and across land owned by the grantor in the Town of Prairie du Chien County of Crawford, State of Wisconsin, said easement to be 26 feet in width, lying 3 feet west of and 25 feet east of the reference line described as follows:

Commencing at a point in the north line of the NW 1/4 of the NW 1/4 of Section 15, T 7 N, R 6 W, 773 feet east of the northwest corner thereof; thence S 3° 34' E 35 feet; thence S 4° 17' E 1,799 feet; thence S 7° 51' W 50 feet to a point, said point being the point of beginning; thence continuing S 7° 51' W 434 feet to the grantors south property line and being through part of the SW 1/4 of the NW 1/4 of Section 15, T 7 N, R 6 W as recorded in the office of the Register of Deeds for Crawford County, Wisconsin, in Volume 178 of Deeds, page 317.

This easement supplements that certain easement recorded in the office of the Register of Deeds for Crawford County, Wisconsin, in Volume 158 of Easements, page 548.

No call for monuments.

Where on the north line does the POB fall? End?

E. Formal Easement Creation

2. Creation Instruments

c. Easement Document Grantee's deed



ELECTRIC LINE EASEMENT

WPL 2091-P 193826 VOL 338 PAGE 27 Line Title Prairie du Chien-Seneca 69 KV Line
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 Work Order No. 72-11-77187.1

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F. Rights and Restrictions

1. Right of Enjoyment

Beneficiary has the right to full and reasonable use.

Wording can open or restrict allowed use.

Expressed use may have support use required

Ex: Utility line easement

Includes reasonable maintenance access for repairs, tree trimming, removal, etc

Servient estate also has right of enjoyment of underlying fee.

Neither can interfere with the other's use



F. Rights and Restrictions

2. Non-Obstruction

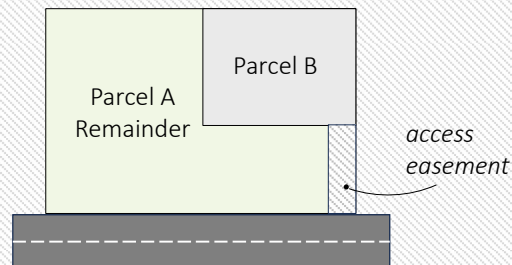
The servient estate cannot interfere with the beneficiary's easement use.

Or vice versa, for that matter.

Parcel A: 30 ac farmette

Parcel A creates 5 ac Parcel B.

Included access easement to Parcel B.



F. Rights and Restrictions

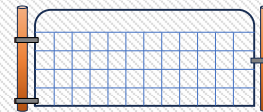
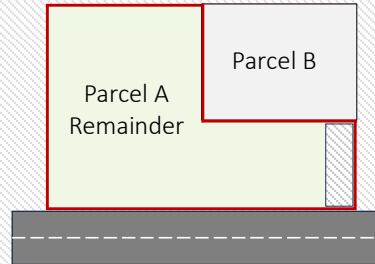
2. Non-Obstruction

After 5 years, Parcel A decides to raise horses.

Fences entire perimeter including both ends of access easement w/o gates.

Obstruction of Parcel B's access who threatens lawsuit.

Parcel A installs gates at both ends of easement.



F. Rights and Restrictions

3. Overburdening

Use exceeds that expressed in granting instrument or exceeds reasonably anticipated future use.

Example 1

Phillips sells rear half to Murphy and grants appurtenant access easement.

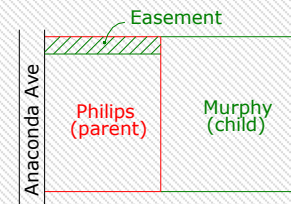
Murphy builds a home; does hobby woodworking.

Murphy's woodworking hobby grows into a business.

Hires workers.

Trucks deliver raw material, take finished products, etc

Overburdening?



F. Rights and Restrictions

3. Overburdening

Use exceeds that expressed in granting instrument or exceeds reasonably anticipated future use.

Example 2

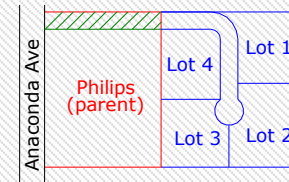
Phillips sells rear half to Murphy and grants appurtenant access easement.

Murphy builds a home.

After a few years Murphy subdivides parcel into 4 lots.

New street hooks up to Murphy's easement.

Overburdening?



F. Rights and Restrictions

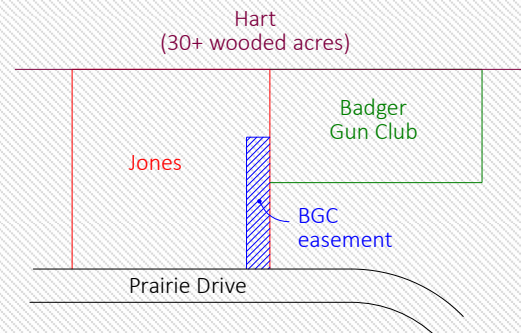
4. Misuse/Trespass

Use outside easement conditions can constitute trespass. Similar to overburdening - distinction left to court.

Jones provides appurtenant access easement to Badger Gun Club (BGC).

Allowed BGC members to access grounds for club use.

Hart's wooded parcel is on north side of Jones & BGC lands.



F. Rights and Restrictions

4. Misuse/Trespass

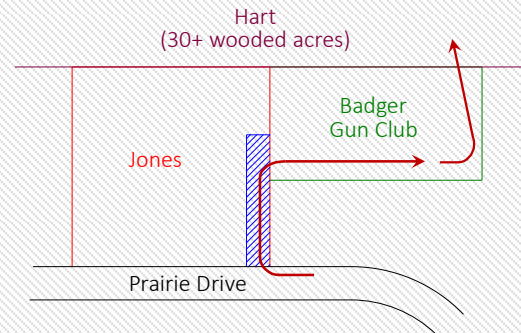
Use outside easement conditions can constitute trespass.

Hart's parcel is prime deer hunting area.

Gives BGC members permission to hunt on his land during deer season.

BGC members drive to BGC across Jones easement, park, then hunt on Hart's land.

Jones sues, says easement is being misused. Sues



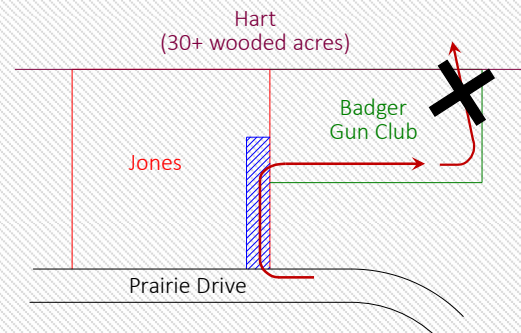
F. Rights and Restrictions

4. Misuse/Trespass

Use outside easement conditions can constitute trespass.

"By its express terms, this easement unambiguously limits the Club's use of the easement such that it may be used only to access or to leave the Club's property. As such, use of the easement to access any other property is outside the grant of this easement."

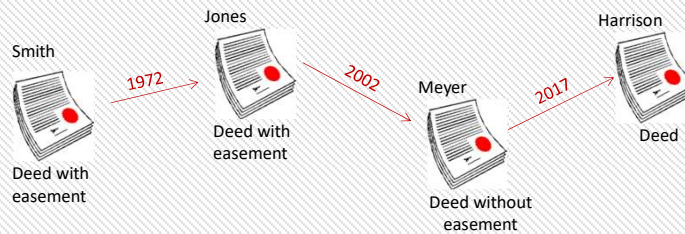
Grygiel v. Monches Fish & Game Club, Inc., 787 NW 2d 6 - Wis: Supreme Court 2010



F. Rights and Restrictions

5. Break in Title Chain

What if appurtenant easement gets left off the deed at a later conveyance?



It still exists - runs with the land.
For both dominant and servient estates.



F. Rights and Restrictions

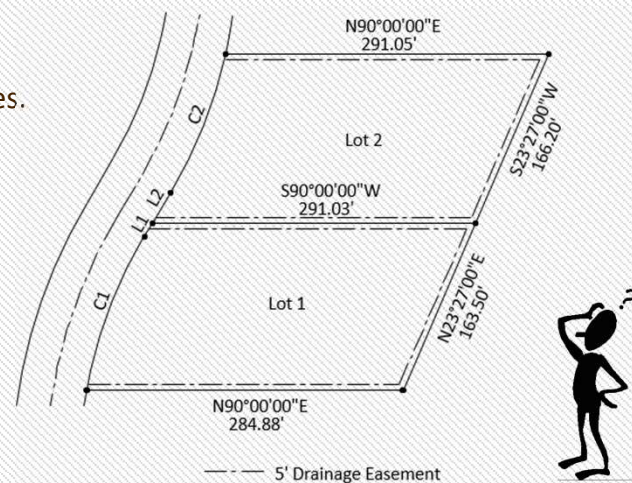
6. Who is the Beneficiary?

Not always apparent

Ex: drainage easements along lot lines.

- ✓ Purpose
- ✓ Location & extent
- ✗ Beneficiary?

Appurtenant or in Gross?



G. Easement Termination

1. Release

Beneficiary can release an easement.

Can be a challenge with an easement that benefits more than one party
All parties would have to release.

2. Necessity Cessation

An easement by necessity ends should the necessity cease.

If an alternate easement is obtained, then the one by necessity is automatically removed.

3. Condition Met

A conditional easement is extinguished or changed if a specific condition is met.

This is common with construction easements.



G. Easement Termination

4. Vacation

Vacation is an action by the public to release its interest in a public dedication.

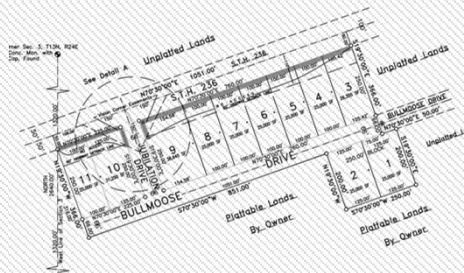
Vacation request can originate:

Petition by all the owners affected by the easement

Public decides to release a street that has not be improved or used

A re-plat request of a previously platted area. This normally requires vacation of public easements before it can continue.

Vacation cannot release private easements.



G. Easement Termination

5. Abandonment

Can be touchy

The court determined that despite the fact the alternative route was more convenient, the owner of the dominant estate retained the right to use and enjoy an easement giving him access to another route. *Id.* The court reiterated that abandonment would only be found when there is an expression of an intent to abandon the easement. *Id.*

Mueller v. Hoblyn, 887 P. 2d 500 - Wyo: Supreme Court 1994

Most court refer to this definition of *abandonment* :

"As a general rule, an easement acquired by grant or reservation cannot be lost by mere nonuser for any length of time, no matter how great. The nonuser must be accompanied by an express or implied intention to abandon."

25 Am.Jur. Easements and Licenses, § 105, p. 509.

Generally non-use of an easement for prolonged time must be accompanied with an action or indication that the easement is abandoned.



G. Easement Termination

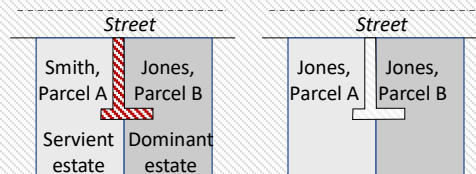
6. Single Owner of Servient & Dominant Estates

When the dominant and servient estates come into single ownership...

(3) Civil Code section 811[6] provides that a servitude is extinguished "[b]y the vesting of the right to the servitude and the right to the servient tenement in the same person." [7] Section 805 provides: "A servitude thereon cannot be held by the owner of the servient tenement."

Zanelli v. McGrath, 166 Cal. App. 4th 615 - Cal: Court of Appeal, 1st Appellate Dist., 1st Div. 2008

...the easement goes away.



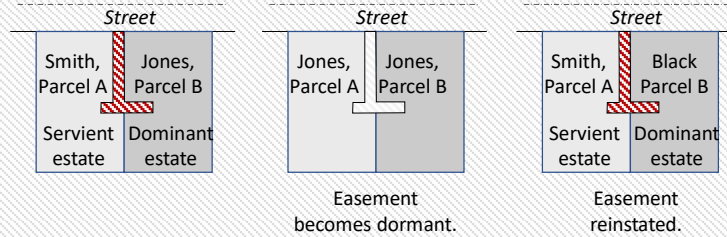
G. Easement Termination

6. Single Owner of Servient & Dominant Estates

On the other hand, in some jurisdictions, the easement doesn't go away because the individual parcels can be sold separately

"There once having been a unity of title, the right to a way of necessity may lie dormant through several transfers of title and yet pass with each transfer as appurtenant to the dominant estate and be exercised at any time."

Bickel v. Hansen, 819 P. 2d 957 - Ariz: Court of Appeals, 2nd Div., Dept. B 1991



G. Easement Termination

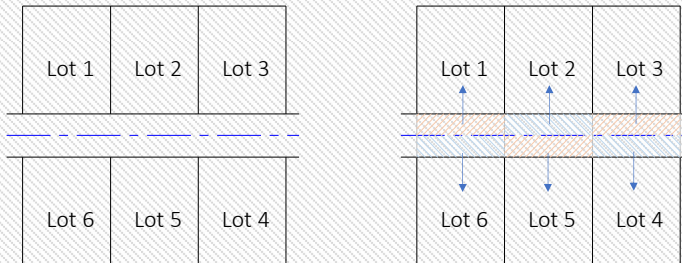
7. Reversion Rights

Easement termination: rights go back to servient estate.

Streets in subdivision: vacation

Who has underlying fee?

Abutting lots owners own to center of street so the rights revert to them



H. Wrapping Up

1. Statute of Frauds

Easement adds/removes rights to a property

Voluntary easement creation must be written transfer - Statute of Frauds (SoF)

Subdivision Plat

Augmenting/qualifying deed clauses

Easement document

SoF does not apply to involuntary easement creation, unless court ordered.

Written instruments must meet State's requirements for platting and/or deed requirements.



H. Wrapping Up

2. Rules of Construction

Formal easement document is an instrument of conveyance.

Treat like any written evidence of property lines

Rules of Construction (RoC)

Unwritten rights: unwritten easement creation - prescription, necessity, & implication.

Decided by courts; surveyor might observe and map

Senior rights

Description overlaps on senior adjoiner

Overlapping easements with contradictory uses

Written intent: Use, location, beneficiary

Surveyor's concern: location

Written, physical, parol evidence.



H. Wrapping Up

3. And So...

Presentation & Paper

- General discussion of easements
 - definition
 - types
 - estates
 - creation, termination
 - etc

Not definitive: just basically scratching the surface

A lot of easement law is common law and can vary considerably even between adjoining states

Easements Relating to Land Surveying and Title Examination, Wilson, John Wiley & Sons

A very good detailed text on easements, although it does not address specifics in all states.



Questions?

