

Easements

- A. Introduction
- B. Easement Classification
- C. Easement Types
- D. Formal Easement Creation
- E. Usage
- G. Some Observations
- G. Terminating an Easement

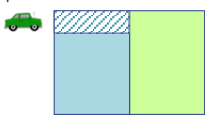
A. Introduction

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, improve, 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



Easements

A. Introduction

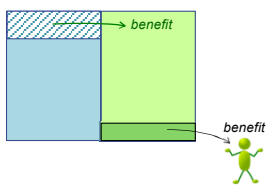
1. Characteristics

Easement has:

Benefit - rights granted to the easement holder

Holder can be:

- Property - Dominant estate
- Individual - Benefitting party



Easements

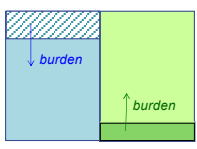
A. Introduction

1. Characteristics

Easement has:

Burden - obligation on land subject to the easement .

Servient estate (aka, Burdened estate).



Easements

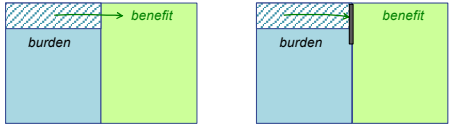
A. Introduction

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.


Easements

A. Introduction

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.




Easements


A. Introduction

1. 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

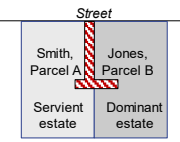


Easements

B. 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.

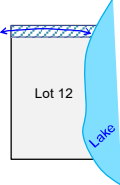
Smith sells to Horn; Horn is encumbered

Easements

B. 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.

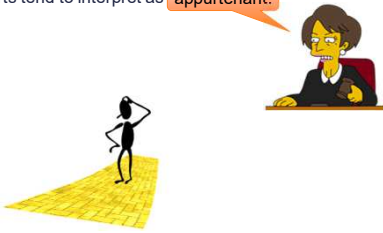
Burden runs with Lot 12 - subsequent owners subject to the easement.

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

Easements

B. Easement Classification

If not clear what type of easement,
Courts tend to interpret as **appurtenant.**




Easements

C. Easement Types

Various methods of creating easements depending on:

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

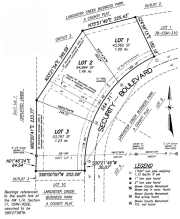


Easements

C. Easement Types

1. Express grant (or reservation).
Common method used in written descriptions.
Granted by the owner of the servient estate.

2. Dedication.
Similar to express grant except it is created by inclusion on: a recorded:
Plat - Wis Stat 23.29(1)
CSM - Wis Stat 236.34(1)(e)



Easements

C. Easement Types

3. By Necessity

Prevent land-locked parcels caused by land divisions.

"A way of necessity typically arises where an owner serves a landlocked portion of his property by conveying such parcel to another."

Backhausen v. Mayer, 204 Wis. 286, 234 N.W. 904 (1931).

Easements

C. Easement Types

3. By Necessity

Prevent land-locked parcels caused by land divisions.

The remainder becomes the servient estate.

Despite being closer and less work to improve, Martin cannot gain easement by necessity over Bishop.

Bishop did not cause the landlock. Outside the situation.

Thomas is the parent parcel - must provide for the child.

Easement by necessity over Thomas.

Easements

C. Easement Types

3. By Necessity

Requirements

"To establish an easement of necessity, the party seeking the easement has the burden to first prove two elements: (1) common ownership or unity of title of the two parcels; and (2) that the property is "landlocked," meaning that a piece of land is surrounded by land belonging to other persons so that it cannot be reached by a public roadway"

Ludke v. Egan, 87 Wis. 2d 221, 229-30, 274 N.W.2d 641, 645 (1979)

Might not be permanent.

"[a] way of necessity will continue as long as the necessity exists and until another lawful way has been acquired."

Niedfeldt v. Evans, 272 Wis. 362, 364, 75 N.W.2d 307 (1956).

Easements

C. Easement Types

4. Prescription

Easement created through long term use of land without permission.

Similar to adverse possession

use is gained rather than ownership.

Easements

C. Easement Types

4. Prescription

Wis Stat §893.28 *Prescriptive rights by adverse user.*

(1) **Continuous** adverse use of rights in real estate of another for at least **20 years**...

(2) **Continuous** use of rights in real estate of another for at least **10 years** by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes....

(3) The mere use of a way over unenclosed land is presumed to be permissive and not adverse.

"An easement by prescription requires the following elements, (1) adverse use hostile and inconsistent with the exercise of the titleholder's rights; (2) which is visible, open and notorious; (3) under an open claim of right; (4) and is continuous and uninterrupted for twenty years."

Mayer v. Grueber, 29 Wis.2d 168, 177, 138 N.W.2d 197 (1965)

Easements

C. Easement Types

4. Prescription

Wis Energy Corp (WEC) - underground gas line

Bauer purchased land w/o knowledge of the line - not visible

WEC claimed prescriptive easement.

Court ruled in favor of WEC.

Why?

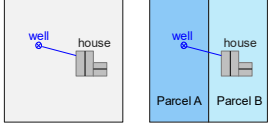
"...§ 893.28(2) contains no mention of the use being either "visible, open, and notorious" or "under an open claim of right.""

Bauer v. Wisconsin Energy Corp., 970 NW 2d 243 (2022)

Easements

C. Easement Types

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

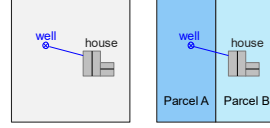


Owner of a parcel conveys westerly part, retains remainder.
After, house & connected well are on different parcels.
Parcel A is conveyed without a reservation clause for well access
Parcel B may gain the easement to the well by implication.

Easements

C. Easement Types

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




"Some states do recognize this theory, but Wisconsin has always followed the strict rule as to easements. Here it is held that easements in the land of another, with the exception of rights of way by necessity, can only be created by grant or prescription."
Tarman v. Birchbauer, 257 Wis. 1 - Wis: Supreme Court 1950

Easements

C. Easement Types


6. Condemnation.
Acquired by authorities acting on behalf & for the good of the public.
Originally limited to gov't & rep agencies.
Now includes "service providers" defined in Wis Stat §32.02.
Wis Constitution, Article I, Section 13:
"The property of no person shall be taken for public use without just compensation."



Easements

D. 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.



Easements

D. Formal Easement Creation

1. Elements
a. Purpose
Defines burden and allowable uses.
Requires clear & careful wording
Ex:
ingress and egress v. access

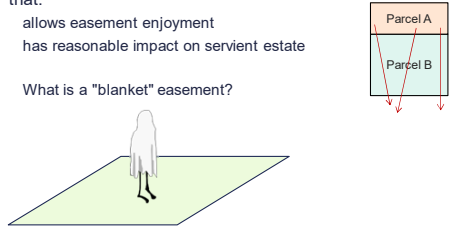


"We have long recognized that, implied in every easement, unless otherwise stated, is the right of the dominant estate to do what is reasonably necessary to enjoy the easement."
Garza v. American Transmission Co., 2017 WI 35 (April 13, 2017)

Easements

D. 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?



Easements


D. 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.



Easements

D. Formal Easement Creation

2. Creation Instruments

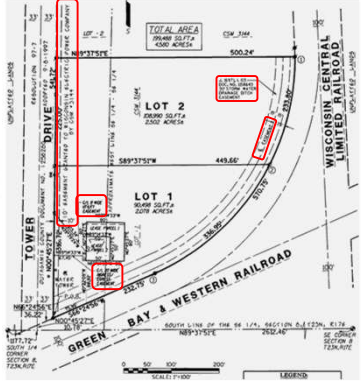
a. Plat or CSM

Locations can be depicted at same accuracy and information as parcel boundaries.

Parcel described by Lot # and plat name or CSM number.
Lot 1 CSM 3428
Info on Plat/CSM is part of the Lot description.
Dimensions & restrictions

Easements

D. Formal Easement Creation



Easements

D. Formal Easement Creation

2. Creation Instruments

a. Plat or CSM

Public easement dedication on plat/CSM must include:
Owner's Certificate - owner offers the dedication
Approval Certificate of gov unit - governing unit accepts it
Easement is created when both certificates are signed and the map recorded.

Required public easement dedication is both:
In gross - accepted on behalf of the public by the local gov't
Appurtenant - Attached to each Lot

Easements

D. Formal Easement Creation

2. Creation Instruments

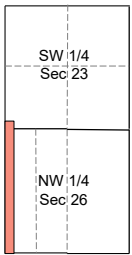
b. Deed

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?



Easements

D. Formal Easement Creation

2. Creation Instruments

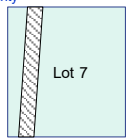
b. Deed

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?



Easements

E. Usage

3. Misuse/Trespass
 Can be similar to overburdening.
 Use outside easement conditions can constitute trespass.
 Beneficiary may recognize overburdening, but maybe not misuse.

"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

Using access to go hunting was misuse of the easement.

Easements

E. Usage

4. Obstructing
 The servient estate cannot interfere with the beneficiary's easement use.
 Or vice versa, for that matter.

Parcel B is child of Parcel A.
 Parcel A provides access easement to Parcel B.

Easements

E. Usage

4. Obstructing
 The servient estate cannot interfere with the beneficiary's easement use.
 Or vice versa, for that matter.

Parcel A owner decides to raise cows.
 Runs a fence around his property across both ends of the easement.
 Parcel B claims this is an obstruction.
 Is it?

Easements

E. Usage

4. Obstructing
 The servient estate cannot interfere with the beneficiary's easement use.
 Or vice versa, for that matter.

What if Owner A puts in locked gates and provides owner B with keys?
 Owner B claims this raises his burden because now he has to get out of his vehicle twice at each gate and also has to worry about always having the keys with him. Claims it's still an obstruction.
 Is it?

Easements

E. Usage

5. Transmission Lines
 Wis Statutes
 §182.017(7) - Description requirements for high voltage lines.
 §196.491(1)(f) - High voltage line definition
 §706.05 - removes "full description" requirements on recorded instruments for utility easements.

Easements

E. Usage

6. 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.

Easements

E. Usage

7. Who is the Beneficiary?
Not always apparent

Ex: drainage easements along lot lines.

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

— — — 5' Drainage Easement

Easements

F. Easement Termination

Removing, discontinuing, terminating easement can be harder than creating it.

Formal action

- Release by dominant estate or beneficiary
- Vacation

Automatic

- Necessity cessation
- Meeting a specified condition
- Merger of estates

Legal action

- Misuse?
- Abandonment?

Easements

F. Easement Termination

Vacation

Generally refers to publicly held easements.

A street dedication is both kinds of easement

Appurtenant - public

In gross - each lot in the subdivision/CSM

Vacation requires public release *and* release from each lot *and* release from external lots that may become landlocked.

Easements

F. Easement Termination

Merger of Estates

When the dominant and servient estates come into single ownership the easement goes away.

"[I]f X owns parcel 1, the dominant tenement, but not parcel 2, the servient tenement, and later purchases parcel 2, the easement will be extinguished.... If X later sells parcel 1, the purchaser takes the property without the right to traverse parcel 2, unless X also grants to the purchaser an easement."

Kallas v. B & G Realty, 169 Wis.2d 412, 420, 485 N.W.2d 278 (Ct.App.1992).

Easements

F. Easement Termination

Abandonment

Abandonment is the beneficiary, at some point, ending use.

The use may never have actually started.

Touchy.

Example:

- Road easement was unimproved and unused for >50 yrs
- Servient estate claimed it was abandoned from non-use
- Dominant estate did not agree
- Court ruled that just because the road easement was not used or improved does not mean it was extinguished.

Spencer v. Kosir, 733 NW 2d 921 - Wis: Court of Appeals 2007

Easements

F. Easement Termination

Abandonment

On the other hand, we have Wis Stat §82.19(2):

- (a) Every highway shall cease to be a public highway 4 years from the date on which it was laid out, except the parts of the highway that have been opened, traveled, or worked within that time.
- (b)2. Any highway that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

Usually,

- hold private easements valid unless formally terminated by the benefited party
- while publicly held road easements can be terminated by abandonment.

Easements

G. Some Observations

- General**
 - SoF written transfer:
 - Plat or CSM
 - Augmenting/qualifying deed clauses
 - Easement document
 - SoF does not apply to involuntary easement creation.
- Rules of Construction**
 - Formal easement document is an instrument of conveyance.
 - Interpretation rules same as deed:
 - Rules of Construction
 - Controlling & informative terms
 - Physical & Parol evidence

Easements

G. Some Observations

- Strip Description**
 - For linear easements, strip description is used:
 - Location - Reference line described by metes and bounds,
 - Extent - Width given on both sides; needn't be equal or constant.

“...20 ft left and 30 ft right of the following described line ... thence N 60°00' E. 175.0 ft; thence 327.2 ft along a tangent curve right, said curve with a 250.0 ft radius and 75°00' central angle; thence S 45°00' E, 100.0 ft...”

Easements

G. Some Observations

- Strip Description**
 - Common composition problems:
 - When the reference line ends, so do the sidelines.
 - This creates gap/overlap at non-perpendicular boundary intersections.
 - Sidelines must be extended and shortened in the description.

Easements

G. Some Observations

- Strip 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.

Easements

G. Some Observations

- 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.

Easements

G. Some Observations

- Example Interpretation**

Parties & Description

ELECTRIC LINE EASEMENT Line Title Prairie du Chen-Seneca 69 KV Line

WFL 2015-P 103826 Vol. 338 PAGE 21 Tract No. 12

Grantor(s) Robert J. Zimmerman and Helen Zimmerman, his wife Work Order No. 72-11-7187.1

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, done 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 Chen County of Crawford, State of Wisconsin, said easement to be 26 feet in width, lying 26 feet west of and 26 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 the Section 15, T 7 N, R 6 W, 773 feet east of the northwest corner thereof; thence S 30° 34' E 35 feet; thence S 45° 17' E 1,799 feet; thence S 70° 51' W 50 feet to a point, said point being the point of beginning; thence continuing S 70° 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.

Easements

G. Some Observations

4. Example Interpretation

Rights & Limitations

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, trees, tanks, antennas, windmills or other structures shall be placed within above described easement strip, and that the grantee has the right to trim or remove such trees as may be located within above distances from the reference line, and other trees which, in the judgment of the grantee, may interfere with or endanger said electric lines, and electrically treat from time to 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.

WITNESS the hand and seal of the grantor S, this 18th day of May, A.D. 1978.

In presence of:

Signature <u>Kenneth Helgerson</u> _____ Signature KENNETH HELGERSON _____ Signature _____ _____ Signature _____ _____	Signature <u>Robert J. Zimmerman</u> (SEAL) _____ Signature <u>Helen Zimmerman</u> (SEAL) _____ Signature _____ _____ Signature _____ _____
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Easements

G. Some Observations

4. Example Interpretation

Recording Info

This instrument was drafted by: Kenneth Helgerson
 Checked by: Marc Peterson

STATE OF WISCONSIN }
 County of Crawford } SS

Personally came before me, this 18th day of May, 19 78,
 the above named Robert J. Zimmerman and Helen Zimmerman

to me known to be the person S, who executed the foregoing instrument and acknowledged the same.

REGISTER OF DEEDS 193826
 KENNETH HELGERSON
 Notary Public, State of Wisconsin
 My Commission Expires the 10-19-1980

STATE OF WISCONSIN }
 County of Crawford } SS

Easements

G. Some Observations

4. Example Interpretation

Easements

G. Some Observations

4. Example Interpretation

Location - Ref line plot

First three courses: POC to POB
 POB to End - on servient estate.
 Where on servient estate?
 Description doesn't say much
 Need more information.

Like a resurvey: recreating situation
 at easement creation.

POC

S3°34'E
35 ft

S 4°17' E
1799 ft

POB

S 7°51' W
50 ft

S 7°51' W
434 ft

End

Easements

G. Some Observations

4. Example Interpretation

Easements

G. Some Observations

4. Example Interpretation

Easements

