Easements Not Mentioned
Quasi Easement

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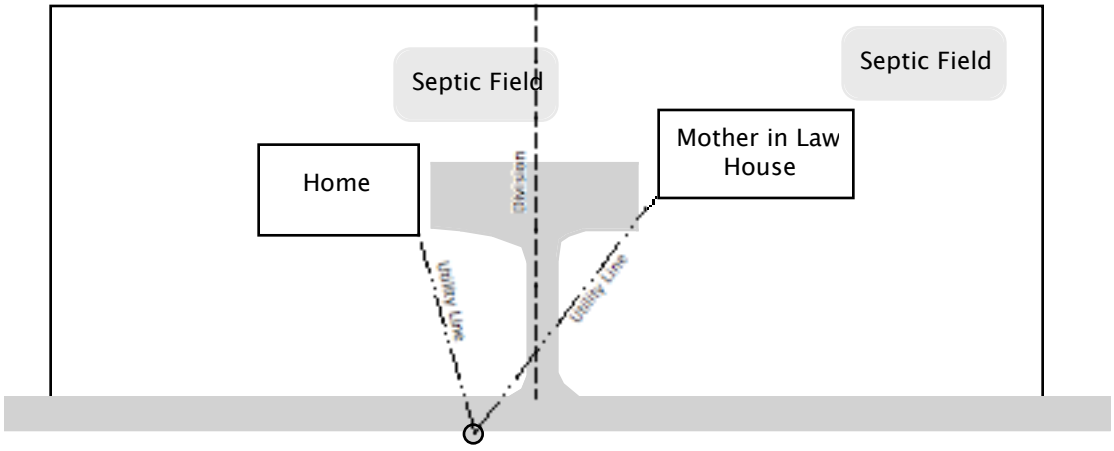
The previous articles have introduced surveyors to two forms of implied easements that arrive by information found in the documents rather than express conveyance of the easements. The failure of the surveyor to identify implied easements may subject the surveyor to liability when damages to the client result.

One form of implied easement is known as a quasi easement. A quasi easement is almost always appurtenant to property. In other words, once the easement is created, it attached to one property and burdens other property, and will exist regardless if mentioned in deeds to the property.

A quasi easement will exist when there is: 1) an existing use at the time of a division and grant, 2) the use was apparent at the division and grant, and 3) the use continued for the benefit (reasonable comfort and enjoyment) of a property after the division and conveyance.

In other words, the respective lots arising after the division will be burdened or benefited as the situation existed prior to the division so long as the use is either known to exist or the situation is such as to reveal its existence to anyone exercising ordinary care. As a consequence a buried or concealed use will not pass as a quasi easement. Such a use to be recognized as an easement requires an express grant



In the above example, the owner decided to convey an existing “mother-in-law house” and lot. (Hopefully after the mother-in-law passed away.) In the above example, the grantee who purchased the mother-in-law house and lot would have a

quasi easement for the driveway and a quasi easement for the utility line. The grantor may have a quasi easement for the septic field and driveway.

Some states require that the use forming the basis for the quasi easement be a necessary use with strict necessity required when benefiting the grantor's remaining land. Under the criteria of strict necessity, the grantor's septic field may not qualify as a quasi easement because the septic field can be located at a different location. Therefore an easement for the existing septic field is not strictly necessary.

The courts require a higher standard for the grantor to have a quasi easement because the grantor, exercising due diligence in the preparation of the deed, could have expressly stated what was intended to be reserved. Put in other words, why should the innocent grantee be burdened by a use that the grantor failed to expressly reserve in the grantor's favor. In these cases, the courts have reasoned that the grantee should only be subject to a use not expressly reserved when the use is apparent and of such necessity that a reasonable person would have to know the use was meant to be reserved in favor of the grantor.

As seen from the example, easements for a use that existed at the time of division and was continued after the division give rise to an implied easement. The surveyor must not presume that every use not reflected as an express citation within the deed is an encroachment.

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