

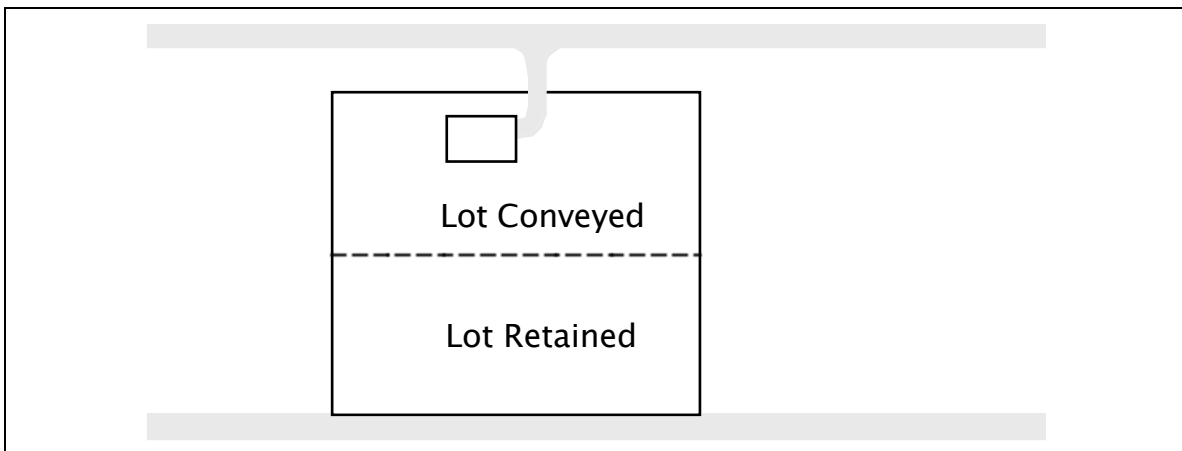
Easements Not Mentioned

Easement by Necessity

by
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Three previous articles have discussed easements that arise by implication and not by express grant. Implied easements exist, are legally recognized, but are not expressly stated. Standards such as the ACSM/ALTA Land Title Standards obligate the surveyor to be aware and consider easements that may not always exist by express creation.

One form of implied easement is an easement that arises by necessity. An easement by necessity requires: 1) a use (need) that is reasonable necessity at time of severance 2) that will cross the remaining land of the grantor (or the grantor's heirs and assigns).

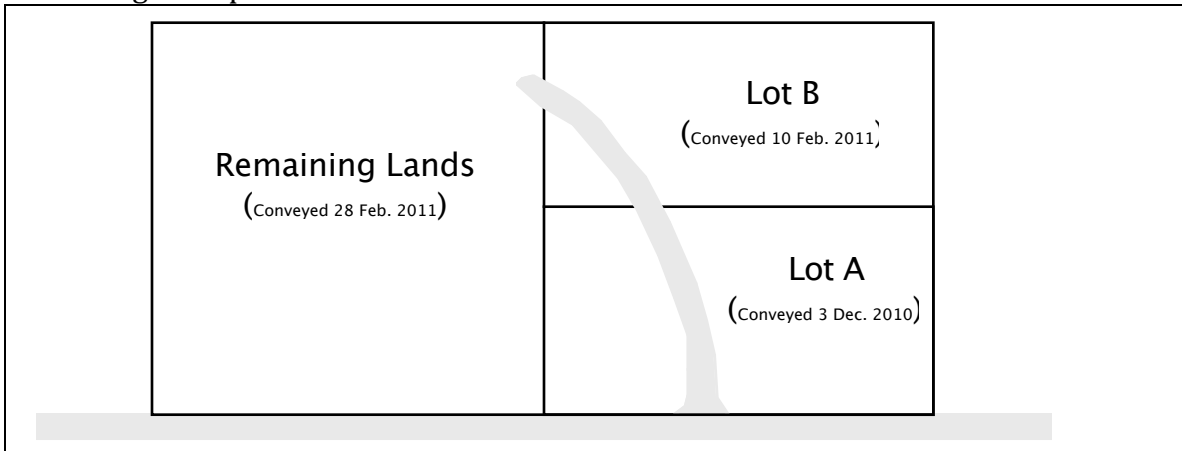


In the previous example, the lot and home that was conveyed utilizes a driveway that is a trespass on the neighboring property. As a consequence, there is an easement by necessity required to provide legal access to the lot that resides across the lot retained by the grantor.

An easement by necessity generally requires there be strict necessity and not just a use that would be beneficial or less burdensome. For example, a lot that is conveyed with a six foot wide access easement would not allow for a wider easement by necessity because a six foot wide easement would not allow for larger trucks or equipment needed to build a house.

Some states would not allow an access easement where the lot borders navigable water on the presumption that access, though difficult, is possible by travel on the navigable water.

Finally, an easement by necessity burdens the grantor's remaining lands as the following example illustrates:



In the previous example, access to the public road would be more convenient by using the existing road through lot A. However, unless the grantor reserved an easement for the road, the access from Lot B has to pass through what were the remaining lands of the grantor at the time Lot B was conveyed. This is true even though the grantee of the grantor's remaining lands presumed the owner of Lot B would use the road.

As the examples, illustrate the surveyor must understand easements created by necessity and be cognizant of the sequence of the conveyances and the disposition of the various lots to correctly identify when an implied easement arises and where it would exist.

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